TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1944

No. 1189

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD. AND DIAMOND TRADING COMPANY, LTD., PETITIONERS,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

PETITION FOR CERTIORARI FILED APRIL 23, 1945.

CERTIORARI GRANTED APRIL 23, 1945.

Supreme Court of the United States

OCTOBER TERM, 1944

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DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., ET AL.,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

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District Court of the United States

FOR THE SOUTHERN DISTRICT OF NEW YORK

Civil Action File No. 29-446

UNITED STATES OF AMERICA,
Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIÈRE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM,
Defendants.

SUMMONS

To the above named Defendants:

You are hereby summoned and required to serve upon Lawrence S. Aspey, Herbert A. Berman, Patrick A. Gibson, and Edward S. Stimson, Special Assistants to the Attorney General, plaintiff's attorneys, whose address Fourteenth Floor, 30 Broad Street, New York 4, New York, an answer to the complaint which is herewith served upon you, within twenty days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

[s] GEORGE H. FOLLMER
Clerk of Court

[SEAL OF COURT]

Date: January 29, 1945.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM,
Defendants.

Civil No. 29-446

COMPLAINT—FILED, JANUARY 29, 1945

The United States of America, Plaintiff, by its attorneys, acting under the direction of the Attorney General of the United States, brings this action against the defendants and complains and alleges as follows:

I.

JURISDICTION AND VENUE

1. This complaint is filed and this action is instituted against the defendants under Section 4 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies" commonly known as the Sherman Antitrust Act, and under the Act of Congress of August

27, 1894, c. 349, Sec. 74, 28 Stat. 570, as amended, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes" commonly known as the Wilson Tariff Act, in order to prevent and restrain continuing violations by defendants, as hereinafter alleged, of Sections 1 and 2 of the Sherman Act and Section 73 of the Wilson Tariff Act.

2. All of the corporate defendants do business in the United States and more particularly transact business in the Southern District of New York, have done so continuously for many years, and are found therein. Companhia de Diamantes de Angola (hereinafter called Diamang) has an office in the Southern District of New York. The individual defendants, Herbert H. Vreeland, Albert E. Thiele, Lute J. Parkinson, and Russell Johnson Parker reside in the Southern District of New York.

II.

DEFENDANTS

Corporate Defendants

3. De Beers Consolidated Mines, Ltd. (hereinafter called De Beers), a corporation organized in 1888 under the laws of the Colony of the Cape of Good Hope, South Africa, and now existing under the laws of the Province of the Cape of Good Hope, Union of South Africa, with an office and principal place of business at 36 Stockdale Street, Kimberley, Cape of Good Hope, Union of South Africa, is made a defendant.

4. Diamond Corporation, Limited (hereinafter called Diamond Corporation), a corporation organized in 1930 and now existing under the laws of the Union of South Africa, with its principal office and place of business at Kimberley, Cape of Good Hope, Union of South Africa, is made a defendant. De Beers owns 80% of its outstanding stock and the

remaining 20% is owned by Consolidated Diamond Mines of South West Africa, Limited (hereinafter called Consolidated Diamond Mines).

5. Diamond Trading Company, Limited (hereinafter called Diamond Trading Company) a corporation organized in 1934 and now existing under the laws of the Union of South Africa with its principal office and place of business in London, England, and an office and place of business in Kimberley, Cape of Good Hope, Union of South Africa, is made a defendant. De Beers and Diamond Corporation each own 50% of its stock.

6. Societe Generale de Belgique (hereinafter called Societe Generale), a corporation organized about 1903 (as a successor to corporations organized in 1822 and 1830), and now existing under the laws of the Kingdom of Belgium, is made a defendant. It owns approximately 3500 of the approximately 5000 industrial enterprises in Belgium and more than 50% of the mining, power, and raw materials industries of the Belgian Congo. It owns 77% of the 40,000 outstanding shares of the corporation designated below as Beceka and owns stock in Forminiere and Diamang.

7. Societe Miniere du Beceka (hereinafter called Beceka), a corporation organized in 1919 and now existing under the laws of the Belgian Congo, is made a defendant. It owns deposits which are the principal source of the world's industrial diamonds.

8. Societe Internationale Forestiere et Miniere du Gongo (hereinafter called Forminiere), a corporation organized in 1906 and now existing under the laws of the Belgian Congo, with its principal office and place of business at Tshikapa, Belgian Congo, is made a defendant. It works the diamond deposits owned by Beceka and is the largest producer of diamonds in the Belgian Congo. Ninety-eight per cent of the diamonds it produces are industrial diamonds.

9. Diamang, a corporation organized in 1917 and now existing under the laws of Portugal, with its principal office at Lisbon, Portugal, is made a defendant. It produces substantially all diamonds mined in Portuguese Angola.

10. Consolidated Africa Selection Trust, Limited (hereinafter called Consolidated Selection), a corporation organized in 1924 and now existing under the laws of the United Kingdom, is made a defendant. It owns extensive diamond producing properties and is the largest diamond producer in the Gold Coast.

11. Sierra Leone Selection Trust, Limited (hereinafter called Sierra Selection), a corporation organized in 1934 and now existing under the laws of the United Kingdom, is made a defendant. It is a wholly owned subsidiary of Consolidated Selection and produces practically all diamonds that are produced in Sierra Leone.

Individual Defendants

12. Herbert H. Vreeland, a resident of New York City, is made a defendant. He is now and since before 1924 has been a stockholder and director of both Forminiere and Diamang.

13. Albert E. Thiele, a resident of Scarsdale, New York is made a defendant. He is a stockholder and director of both Formienere and Diamang.

14. Solomon R. Guggenheim, a resident of Port Washington, Long Island, New York, is made a defendant. He is now and since before 1923 has been a stockholder in Forminiere and Diamang.

15. Clendenin J. Ryan, a resident of Hackettstown, New Jersey, is made a defendant. He is and since before 1923 has been a stockholder of Formienere and Diamang.

16. George K. Sturm, a resident of Woodbridge, New Jersey, is made a defendant. He is a stockholder and auditor of Forminiere.

17. Herbert H. Vreeland, Albert E. Thiele, Solomon R. Guggenheim, Clendenin J. Ryan and George K. Sturm are the American stockholders of Forminiere. They hold stock therein under a voting trust agreement called the Congo Mines Participation Agreement. The interests and voting rights in Forminiere so held by said individual defendants are substantial, and they acting together with Societe Generale control Forminiere.

18. Lute J. Parkinson, a resident of New York City, is made a defendant. He is now and for many years has been assistant general manager and an agent of De Beers.

19. Russell Johnson Parker, a resident of New York City, is made a defendant. He is now and since before 1925 and 1934, respectively, has been managing director of Consolidated Selection and Sierra Selection.

20. Each of the individual defendants has participated and now participates in the direction and management of the defendant corporations employing him or of which he is an officer or stockholder, and particularly in those corporate affairs, policies, and acts described in this complaint. Each of the individual defendants has authorized, ordered, or done some or all of the acts done by his corporation constituting the offenses hereinafter complained of.

III.

The Trade and Commerce Involved

Importance of Industrial Diamonds

21. The diamond is the hardest known substance and a strategic war and industrial material. Diamonds and bort,

a diamantine substance containing impurities, are used in cutting, grinding, and boring hard materials such as metals, stone, etc. They are more effective than other cutting or abrasive materials where speed and precision are required. Being harder, they are used for trueing other cutting materials. Particular uses of diamonds include the following: Diamond drills, saws, shaping tools, gear grinders, thread grinders, and wire drawing dies are used in making gun sights, bombsights, binoculars, compasses, chronometers, gauges, radio wire, magnetos, dynamos, transformers, electric motors, and pistons and crankshaft bearings for airplane motors. Diamond tools are used to true the abrasive wheels used in making crankshafts, camshafts, valves and connecting rods, and to true the tungsten carbide tools used in the manufacture of shells.

22. Where hereinafter used, the term diamonds, unless otherwise specified, refers to rough diamonds, including uncut gem diamonds, industrial diamonds and bort.

Sources of Industrial Diamonds and Bort

23. The diamonds which are used in industry are those diamonds not suitable for use as gems because of impurities and imperfections. Industrial diamonds come from both pipe mines and alluvial deposits and are mined together with gem diamonds from these sources. Industrial diamonds are the residue after the gem stones have been sorted out. The earlier important commercial sources of diamonds were pipe mines; all pipe mines of any importance are located in the Union of South Africa. After 1914, the other commercial source of diamonds, alluvial deposits, were discovered in the Belgian Congo, Portuguese Angola, Gold Coast, and Sierra Leone. There are minor alluvial deposits in other parts of Africa and in South America.

24. Eighty per cent by weight of the world's production of diamonds is used for industrial purposes. Ninety-eight

per cent by weight of the Belgian Congo, sixty per cent of the Gold Coast and Sierra Leone, fifty per cent of the South African, and forty per cent of Angola production of diamonds are suitable for industrial uses only.

Ownership and Control of Diamond Deposits

25. De Beers, directly or through subsidiaries, has acquired and now owns all of the important pipe mines in Africa and thus controls all pipe mines of any importance. De Beers directly or through subsidiaries also has acquired many less important pipe mines with the sole intent and purpose of closing them down so as to keep their production off the market; upon acquisition operations at these mines were discontinued and have never been renewed.

26. De Beers has also acquired and now controls the principal alluvial diamond mining companies of South Africa. It purchased the stock of Cape Coast Exploration Company, Limited, liquidated the company, and took over its assets. De Beers purchased 41% of the stock of Consolidated Diamond Mines of South West Africa, Limited (hereinafter called Consolidated). Anglo American Investment Trust, Limited, owns some stock in Consolidated. Ernest Oppenheimer is chairman of the boards of De Beers, Anglo American, and Consolidated.

27. The Belgian Congo diamond deposits are owned by Beceka and other subsidiaries of Societe Generale. Forminiere mines these deposits under contracts with the owning companies. Diamond deposits in Portuguese Angola are owned and operated by diamang. Gold Coast, Sierra Leone, and certain other African diamond deposits are owned and mined by Consolidated Selection an its subsidiaries, including Sierra Selection.

28. The defendant corporations and their subsidiaries produce and sell approximately 99% of all the diamonds

produced in Africa, and approximately 95% of all the diamonds produced in the world.

Market in the United States

29. The principal market for industrial as well as gem diamonds is in the United States. In 1942 and 1943 imports of all diamonds and of industrial diamonds into the United States were in excess of the world's production of all diamonds and of industrial diamonds, respectively, in those years. There is a continuous stream of diamonds and boart from Africa to England, and thence to the United States. This stream of shipments is a part of the foreign trade and commerce of the United States.

IV.

THE VIOLATIONS OF LAW

30. For many years up to and including the date of the filing of this complaint, defendants have been continuously and now are engaged in a combination and conspiracy to restrain and monopolize trade and commerce of the United States with foreign nations in gem diamonds, industrial diamonds, and boart, and have been and now are parties to contracts, agreements, and understandings in restraint of trade and commerce of the United States with foreign nations, all in violation of Sections 1 and 2 of the Act of Congress of July 2, 1890, c. 647, 26 Stat. 209, as amended, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," commonly known as the Sherman Antitrust Act. Continuously during said period defendants, some of whom were engaged in importing, have been and now are engaged in a combination and conspiracy in restraint of, and have been and now are parties to contracts and agreements intended to operate in restraint of, lawful trade and free competition in lawful trade and commerce of the United States, and intended to increase the market price in the United States of diamonds, industrial diamonds, and boart

imported into the United States, all in violation of Section 73 of the Act of Congress of August 27, 1894, c. 349, 28 Stat. 509, as amended, commonly known as the Wilson Tariff Act. Defendants are continuing and threaten to and will continue said offenses unless the relief hereinafter prayed for in this complaint is granted.

31. The aforesaid combination and conspiracy alleged in the next preceding paragraph have consisted of a continuing agreement and concert of action between defendants: (a) to prevent dealers and consumers in the United States from purchasing diamonds from the producers, (b) to prevent all sale or purchase of diamonds for export to or import into the United States except by purchase through Diamond Trading Company and except subject to terms and conditions set by defendants; (c) to prevent all persons in the United States other than certain favored brokers, dealers, and cutters from purchasing diamonds from the Diamond Trading Company, (d) to limit the production and supply of diamonds, (e) to limit and restrict the quantity of diamonds imported into the United States, and (f) to fix, stabilize, and enhance the prices at which diamonds are sold in the United States.

32. Defendants have formed and carried out the aforesaid combination and conspiracy by the acts, conduct, and agreements in this complaint described and alleged.

33. The defendants have controlled the marketing of diamonds in the United States and in other countries principally by causing substantially all diamonds produced in Africa to be sold through a single selling agency. Until 1934 that selling agency was a group of London merchants known as the Diamond Syndicate and after 1934 and continuing to the present time it has been Diamond Trading Company. The defendants now cause the Diamond Corporation and the South African Producers Association to acquire from sub-

stantially all the producers in Africa all diamonds sold by them and to resell the diamonds so acquired to the Diamond Trading Company exclusively. By these means the defendants obstruct and impede the free flow of diamonds to the United States from the producers or purchasers from them, prevent substantially all purchases of diamonds for export to or import into the United States except by purchase through Diamond Trading Company and except in accordance with terms and conditions set by defendants, and monopolize the sale of diamonds exported to or imported into the United States. The aforesaid arrangements which defendants have used to control the sale of diamonds in the United States and other markets have varied from time to time as hereinafter more fully alleged.

34. Prior to 1920 the producers of diamonds in the Union of South Africa and the Mandate of Southwest Africa (who are hereinafter sometimes collectively referred to as the Conference Producers) agreed with each other to monopolize the supply of diamonds to world markets. For this purpose they formed an association known as the Conference and agreed with each other to limit their production and to sell their diamonds exclusively to a single selling agency, a group of London merchants known as the Diamond Syndicate. All important diamond deposits then being worked were owned or controlled by the Conference Producers.

35. Defendant De Beers is now and was for many years prior to 1920 the most important Conference Producer, controlling the great bulk of the diamond deposits in the areas worked by them and exercising a dominant influence in bringing about and maintaining the agreements above referred to. Other Conference Producers include New Jagersfontein and Premiere, both now wholly owned by De Beers, and Consolidated Diamond Mines, which De Beers controls and of whose capital stock De Beers owns 41%.

36. The agreements mentioned in paragraph 34 above were maintained in effect until 1930 when they were replaced with further means to control the production and marketing of diamonds sold by the Conference Producers as hereinafter described.

37. After 1920 there were no further discoveries of important diamond deposits in the Union of South Africa and the Mandate of Southwest Africa. In the Belgian Congo, Portuguese Angola, Sierra Leone, and the Gold Coast, however, previously undeveloped alluvial deposits of great importance came into production from time to time between 1920 and 1930. These deposits are especially rich in industrial diamonds and constitute the principal source of the world's supply of industrial diamonds.

38. In order to maintain the control first established by the Conference Producers over the world market for diamonds, including the United States market, which is the largest and most important diamond market, and to maintain high prices for diamonds, both gem and industrial, throughout the world, defendants have continuously eliminated all competition between the Conference Producers and the companies who between 1920 and 1930 came into production in Africa outside of the Union of South Africa and the Mandate of Southwest Africa. Among this later group of producers (hereinafter sometimes collectively referred to as the non-Conference Producers), the most important are defendants Becceka, Forminiere, Diamang, Consolidated Selection, and Sierra Selection and its subsidiaries. Becceka owns and Forminiere operates the richest diamond mine in the world; over 90% of its production by weight consists of industrial diamonds.

39. For the purposes alleged in paragraph 38 above, from time to time as the non-Conference Producers came into production the Conference Producers and the Diamond Syndi

cate purchased diamonds from them in large quantities, and as each non-Conference Producer became of importance in diamond production defendants have caused it to enter into contracts with the Diamond Syndicate requiring each such producer to sell its diamonds of all kinds exclusively to the Syndicate. Thus the Syndicate contracted to purchase all diamonds of Diamang in 1923, of Consolidated Selection in 1925, and of Forminiere in 1926. Alluvial deposits were discovered in Lichtenburg and Namaqualand, South Africa, in 1926 and 1927. They were rapidly developed and from 1927 to 1930 they produced large quantities of diamonds and were exhausted. The Syndicate acquired a large part of these diamonds. The aforesaid exclusive purchase contracts between the Diamond Syndicate and Diamang, Forminiere, and Consolidated Selection, as well as such contracts made by the Syndicate with the other non-Conference Producers, were extended and renewed and maintained continuously in effect and carried out until 1930 when they were replaced as hereinafter described.

40. The Diamond Syndicate and the Conference Producers kept off the market most of the diamonds purchased by them as above described and thus accumulated large stocks which the Diamond Syndicate marketed only from time to time and in a manner designed to maintain high prices for diamonds throughout the world.

41. The depression which began in 1929 made it difficult for the Syndicate to finance the extensive purchase agreements above-mentioned and the carrying of the large stocks of diamonds accumulated and held off the market as aforesaid. In order to relieve the Syndicate and avoid an uncontrolled market, the Conference Producers purchased one-half of the Syndicate's stocks on hand as of July 1, 1929.

42. Thereafter, further to assist in financing the aforesaid purchases of diamonds and the carrying of stocks there-

of, and to reduce the participation of the Diamond Syndicate in defendants' system of control of the production and marketing of diamonds, defendants in 1930 formed the Diamond Corporation and caused it to take over from the Conference Producers their aforesaid stocks of diamonds and caused it also to take over from the Diamond Syndicate the latter's aforesaid exclusive purchase contracts, referred to in paragraphs 34 and 39, respectively, with each of the Conference Producers and non-Conference Producers. De Beers and Consolidated Diamond Mines acquired and now own 80% and 20%, respectively, of the stock of Diamond Corporation.

43. From 1930 to about 1933 defendants caused Diamond Corporation to maintain exclusive selling agreements with the Diamond Syndicate and accordingly Diamond Corporation during this period sold its diamonds, which included all diamonds sold by both the Conference Producers and the non-Conference Producers and such amounts as have been marketed from time to time out of the aforesaid accumulated stocks taken over by Diamond Corporation, exclusively to the Diamond Syndicate.

44. In or about 1933 defendants modified their system of control by forming the South African Producers Association, Limited (hereinafter called the Producers Association) and by causing all of the Conference Producers to terminate their contracts with Diamond Corporation and to become members of the Producers Association and to enter into contracts with it by which they agreed to sell their diamonds exclusively to it. Diamond Corporation continued its contractual arrangements with the non-Conference Producers whereby they sold their diamonds exclusively to it. Diamond Corporation, however, became a member of the Producers Association and entered into contracts with it by which Diamond Corporation agreed to sell its diamonds exclusively to the Producers Association. The Producers Association which thus acquired the diamonds of all the companies contracted to sell the dia-

monds so acquired by it exclusively to the Diamond Syndicate.

45. In or about 1934 defendants completed the concentration of marketing control in their own hands and eliminated the Diamond Syndicate from its previous share in control. For this purpose and to carry out more effectively the purposes hereinbefore alleged defendants formed Diamond Trading Company (of whose capital stock De Beers and Diamond Corporation each took 50%) and caused it to take over from the Diamond Syndicate the latter's exclusive purchase contracts with the Producers Association. Thereby Diamond Trading Company replaced the Diamond Syndicate as the exclusive selling agency for all diamonds produced by the Conference Producers and the non-Conference Producers. Diamond Trading Company renewed and maintained in effect such exclusive purchase contracts with the Producers Association continuously until the present time, with the revision as to industrial diamonds in 1943 as hereinafter described.

46. Under the contracts mentioned in the last preceding paragraph, Diamond Trading Company and the Producers Association have agreed from time to time upon the quantities of diamonds that the former buys from the latter. In turn the agreements between the Producers Association and its members, including Diamond Corporation, provide that the members sell to the Association in such amounts as to replace the diamonds disposed of to world markets by Diamond Trading Company. The members of the Producers Association have from time to time agreed among themselves upon individual quotas to be sold to it by the respective members in filling the total amounts to be sold by it to Diamond Trading Company. Diamond Corporation, in filling its individual quota of sales to the Producers Association, has agreed from time to time with each of the non-Conference Producers upon the individual quotas to be sold by each of them to Diamond Corporation. By these quota restrictions

defendants have limited both the production and the marketing of both gem and industrial diamonds by Conference Producers and by non-Conference Producers.

47. In 1943 defendants modified the aforesaid selling agreements to change the course of sale of industrial diamonds. Diamond Corporation no longer sells to the Producers Association the industrial diamonds which Diamond Corporation acquires from the non-Conference Producers but instead purchases from the Producers Association all industrial diamonds which the Producers Association purchases from Conference Producers, and Diamond Corporation now sells industrial diamonds so acquired from both Conference Producers and non-Conference Producers directly to the Diamond Trading Company. The Producers Association continues to sell to Diamond Trading Company all gem diamonds of the Conference Producers and non-Conference Producers in accordance with the agreement alleged in paragraph 45.

48. As a result of the revision of the aforesaid selling agreement the individual quotas allocated to each producer apply only to their sales of gem diamonds, but the quota limitations upon the amount of gem diamonds to be sold by each producer has nevertheless continued to limit the production of industrial diamonds and boart. Gem diamonds are mined in no greater amounts than are to be sold under the selling agreements and industrial diamonds and boart are not mined separately from gem diamonds but only coincidentally therewith since gem diamonds, industrial diamonds, and boart are scattered through the same ore. For 1943 the agreed percentage sales quotas for gem diamonds allocated to the members of the Producers Association were: 20% for Diamond Corporation, 47% for De Beers, 17.5% for Consolidated Diamond Mines, and 15.5% for the Union of South Africa. Premiere and New Jagersfontein were not

operating, and their quotas were assigned to Diamond Corporation.

49. In consequence of the arrangements aforesaid, Diamond Trading Company now controls the purchase and resale of all diamonds of all kinds mined by the Conference Producers and non-Conference Producers and is the sole selling agency for 99% of all diamonds produced in African and 95% of all diamonds produced throughout the world.

50. De Beers and its subsidiaries have further limited the world's supply of diamonds and enhanced their price throughout the world by shutting down all mines owned and controlled by De Beers and its subsidiaries. Since 1939 sales of diamonds by defendants have been far in excess of the world's production of diamonds. The excess has been met out of large stocks accumulated by defendants as hereinbefore described and held by them in 1939. Since that date they have greatly increased their sales especially of industrial diamonds and have systematically decreased their production of diamonds of all types.

51. The monopoly power acquired as aforesaid and exercised by the defendants through Diamond Trading Company has been asserted in arbitrary and unfair treatment of prospective purchasers and customers and by enhancement of diamond prices in the United States to arbitrary and exorbitant levels. These effects have been brought about through additional means of regulating the marketing of diamonds and strict control over sales by Diamond Trading Company to dealers as hereinafter described.

52. Diamond Trading Company sells gem diamonds only on four occasions during each year, only in London, and only at so-called "sights", to which only a few selected dealers are admitted. Furthermore gem diamonds at such sights are sold only in series or lots selected by Diamond Trading Com-

pany. Each series or lot contains a wide range of different sizes and qualities, representing more or less a cross-section of the gem diamonds that the company has in stock, arbitrarily chosen by Diamond Trading Company. Dealers can buy at the sights only these selections. The dealers selected for admission to sights are permitted to attend them only on condition that they purchase a minimum of £20,000 of diamonds at each sight which they attend. Diamond Trading Company disciplines dealers who fail to make the required purchases. They are refused admission to subsequent sights and thus are denied opportunity further to engage in purchase of gem diamonds. All purchases are required to be paid for in advance.

53. Diamond Trading Company sells industrial diamonds in various ways. It sells in industrial series at sights in London. It sells Boart and some kinds of industrial diamonds by classes apart from the series. It sometimes sells direct to purchasers in the United States and other countries on order by direct mail or cable or through brokers.

54. As in the sale of gem diamonds, purchasers of industrial diamonds are required by Diamond Trading Company to pay in advance, before delivery, at the time the goods are ordered. Purchasers who have ordered by mail or cable are not permitted to inspect shipments before accepting delivery, or to refuse to accept shipments or to return them after inspection. Diamond Trading Company requires purchasers to buy unseen, and without warranty or representation, the industrial diamonds or boart shipped, and, having been paid, Diamond Trading Company will not take back the goods or make any adjustment. Diamond Trading Company has included in shipments of material sold as industrial diamonds material which cannot be used for the desired industrial purposes or for any purposes at all. Purchasers have no recourse and have no other source from which to buy. Purchasers are frequently prevented from buying the type of

industrial diamonds needed for their or their customers' industrial operations and are permitted to buy only in series elected arbitrarily by Diamond Trading Company.

55. In maintaining the above-described system of complete control of diamond production and marketing, Diamond Trading Company has systematically prevented the accumulation in this country of a stockpile of industrial diamonds. Diamond Trading Company has persistently refused to sell industrial diamonds for stockpiling purposes to agencies of the United States seeking to establish such stockpiles for military reasons. In sales of industrial diamonds to manufacturers and dealers in the United States, Diamond Trading Company has systematically prevented purchases by such companies in amounts that would establish for them more than a few months' supply on hand. When it was feared that German arms might invade England and overrun Africa, the Board of Economic Warfare sought to purchase large quantities of industrial diamonds from the defendants to prevent capture of their existing stocks and to create a stockpile here. The Board succeeded only in obtaining an agreement to establish a stockpile in Canada in the possession of defendants, by the terms of which agreement this stockpile in Canada could be drawn upon for sale and use in the United States only as stocks in this country fell below 90% of what they were on June 30, 1942, and then only when such stocks should not be restored to that level by defendant corporations after 60 days' notice.

56. Diamond Trading Company has increased prices of industrial diamonds during the war by gradually depreciating the quality of industrial series and of most grades and classes of industrial diamonds without reducing prices.

57. The restraints upon production and marketing of diamonds as herein set forth are maintained by defendants for the primary purpose of maintaining diamond prices sold

in, or for export to or import into, the United States, where the purchase and use of diamonds is larger than in any other country in the world. That purpose is furthered by numerous acts done or procured to be done in this country by defendants, including those hereinbelow described, and defendants have put the aforesaid conspiracy into operation, made it effective, and carried it out within the United States in the following ways:

(a) De Beers and its subsidiaries have conducted and now carry on an advertising, publicity, and public relations campaign in the United States through its agents, N. W. Ayer & Son, Inc. One object of this campaign is to induce the consuming public in the United States to believe that diamonds are naturally rare and valuable, and that they are inherently worth the retail prices quoted in the advertisements, prices which are several times those which would prevail under competitive conditions. Another object of the campaign and another function of N. W. Ayer & Son, Inc., is to discourage, eliminate and counteract publicity unfavorable to or critical of De Beers and its subsidiaries. At the direction of De Beers, N. W. Ayer & Son, Inc. has induced publishers of magazines not to run articles which in its view would create publicity unfavorable to De Beers and its subsidiaries.

(b) N. W. Ayer & Son, Inc. under the direction of De Beers, regularly and continuously performs many services in the United States for De Beers and its subsidiaries. It investigates retail prices by using shoppers. It has reported on United States Government price regulations for diamonds. It reports complaints made by customers of the Diamond Trading Company. It has reported on the numbers, wages, hours, and union membership of diamond cutters in New York and Philadelphia. Its agents travel over the United States in the interest of the public relations and publicity campaign.

(c) De Beers and its subsidiaries regularly and continuously have sent and now send representatives to the United States to investigate and report on market conditions, to arrange for and supervise advertising, publicity, and public relations work, and to investigate complaints, most of which have been made because of defendants' monopolistic practices and the resulting high prices, depreciated quality, limited supply, or exclusion of dealers or other purchasers from the trade.

(d) Diamond Trading Company requests and obtains reports on the credit of American customers from its agents in New York, Banque Diamantaire Anversvoise S. A. It also ships packages of diamonds to this bank for delivery to particular customers in the United States.

(e) De Beers and its subsidiaries have had and now have diamonds in the United States. Some of these, while they were in the United States, were sold to the United States Government by a representative of De Beers and its subsidiaries who was in the United States.

(f) As alleged in paragraph 2 and in paragraphs 12 through 20 above, directors and stockholders of two of the corporate defendants and a managing director, an assistant manager, and agents of some of them reside in this country and are here active in the conduct of the affairs of their respective corporations in effectuation of the aforesaid combination and conspiracy.

(g) Forminiere and Diamang regularly and continuously have purchased and are purchasing machinery, tools, and supplies in the United States for use in their mining operations in Africa. Forminiere is continuously represented by an agent in this country for that purpose.

(h) De Beers and its subsidiaries and Forminiere and Diamang regularly and continuously have maintained and now maintain bank accounts in banks in New

York which they use in paying for advertising, publicity, public relations work, and purchases of machinery, tools, and supplies.

(i) Diamond Trading Company, De Beers, its subsidiaries, and other defendants regularly and continuously have used and now use the United States mails for the successful maintenance of their marketing control and the resulting high price level for diamonds to correspond with purchasers in the United States, to ship diamonds to customers in the United States, and to correspond with their advertising, publicity, and public relations agency in the United States, and to carry out the other activities described in this garapraph 57.

(j) De Beers and its subsidiaries have suggested, tampered with, fixed, and maintained, and are suggesting, tampering with, fixing, and maintaining, the United States retail prices of gem diamonds by advertising in the United States the maximum and minimum retail prices for gem diamonds of different weights, thus causing the public to suspect the quality or genuineness of diamonds offered for sale at retail below these prices.

V.

Effects of the Violations of Law

58. Defendants have restrained the trade and commerce of the United States by the aforesaid combination and conspiracy and the contracts, agreements, arrangements, and practices hereinabove described. The said conspiracy has had the following effects, among others, within the United States:

(a) Through the aforesaid quota arrangements and exclusive sales arrangements the production of diamonds for sale to the United States is restricted and limited.

(b) Through Diamond Trading Company, Diamond Corporation, and the Producers Association monopolistic and exorbitant prices are maintained on all diamonds sold to the United States market. For example, sand boart, which Diamond Corporation buys from Forminiere for two shillings a carat, is resold by Diamond Trading Company to dealers in the United States at seven shillings six pence, which is three and a half times the price paid. The passage of industrial diamonds through the hands of Diamond Corporation and Diamond Trading Company costs the United States Government and manufacturers of war goods in the United States many millions of dollars annually. Of De Beers outstanding stock, 38% is cumulative preferred stock with a cumulative preferred annual dividend of 40%, which has been regularly paid. De Beers' net profits were 44% in 1939, 60% in 1940 and 144% in 1943.

(c) Through exclusive sales arrangements all purchasers for import into or export to the United States and dealers and consumers in the United States are prevented from purchasing diamonds from the producers thereof and are compelled to purchase only diamonds sold by Diamond Trading Company under the terms and conditions of sale established and maintained by defendants through Diamond Trading Company.

(d) Agencies of the United States Government have been prevented from obtaining industrial diamonds and boart and establishing a stockpile in the United States, which they desired for military reasons.

(e) Dealers in industrial diamonds and boart in the United States have been and are being dealt with oppressively by Diamond Trading Company by its practice of requiring them to pay for and take industrial diamonds and boart ordered by mail and cable which they have not had an opportunity of examining or inspecting, and as to

which they have no recourse although the material is in many cases worthless or selected by Diamond Trading Company arbitrarily in series unfitted to the purchaser's needs. They have also been oppressed by Diamond Trading Company's practice of reducing the quality of the several grades and classes of industrial diamonds and boart sold.

(f) Individuals and firms in the United States other than certain favored brokers, dealers, and cutters have been and are prevented from purchasing diamonds from the Diamond Trading Company.

VI.

PRAYER

WHEREFORE the plaintiff prays:

(1) That the Court adjudge and decree that the defendants have combined and conspired to restrain and monopolize, and have agreed and contracted to restrain, foreign trade and commerce of the United States in violation of Sections 1 and 2 of the Sherman Antitrust Act, and that defendants, some of whom were engaged in importing, have been engaged in a combination and conspiracy and have been parties to agreements and contracts intended to operate in restraint of lawful trade and free competition in lawful trade and commerce of the United States and intended to increase the market price in the United States of gem diamonds, industrial diamonds, and boart imported into the United States, all in violation of Section 73 of the Wilson Tariff Act.

(2) That defendants and each of them and their successors, officers, directors, agents, representatives, and all persons and corporations acting on their behalf be perpetually enjoined from combining, conspiring, agreeing, or contracting to restrain or monopolize trade and commerce of the

United States with foreign nations in gem diamonds, industrial diamonds, and boart, and that they be perpetually enjoined from engaging in or participating in practices, contracts, relationships or understandings having the purpose or effect of continuing, reviving, or renewing any of the aforesaid violations of the Sherman Antitrust Act and the Wilson Tariff Act.

(3) That defendants, their subsidiaries, successors, stockholders, officers, directors, agents, representatives, and all persons and corporations acting on their behalf be perpetually enjoined from carrying out any existing contracts, agreements, understandings, or arrangements insofar as any as any such contracts, agreements, understandings, or arrangements shall prohibit or prevent sales by them, or any of them, for import into, or for resale for import into, the United States.

(4) That each defendant be enjoined from practicing in concert with any other defendant any policy or from entering into any agreement with any other defendant having the purpose or effect of limiting or restricting import of diamonds into the United States or of enhancing, fixing, stabilizing, or influencing the prices at which diamonds are sold in the United States.

(5) That, in order to prevent the withdrawal, transfer or dissipation of assets in the United States until such time as this Court shall have determined the issues in this case and defendant corporations shall have complied with its orders, the corporate defendants be restrained and enjoined from withdrawing money from banks in the United States and from withdrawing diamonds or other property from safe deposit boxes in the United States and from withdrawing from the United States or selling, transferring, or otherwise disposing of property in the United States.

(6) That the plaintiff have such other, further, and different relief as the nature of the case may require and the court may deem just and proper.

(7) That pursuant to Section 5 of the Sherman Act, an order be made and entered herein requiring such of the defendants as are not within this district to be brought before the court in this proceeding as parties defendant and directing the marshall of the district in which they severally reside to serve summons upon them.

/s/ FRANCIS BIDDLE
FRANCIS BIDDLE
Attorney General

/s/ WENDELL BERGE
WENDELL BERGE
Assistant Attorney General

/s/ JOHN F. X. MCGOHEY
JOHN F. X. MCGOHEY
United States Attorney Southern District of New York

/s/ LAWRENCE S. APSEY
LAWRENCE S. APSEY
Special Assistant to the Attorney General

/s/ HERBERT A. BERMAN
HERBERT A. BERMAN

/s/ PATRICK A. GIBSON
PATRICK A. GIBSON

/s/ EDWARD S. STIMSON
/s/ EDWARD S. STIMSON
Special Assistants to the Attorney General

DEPARTMENT OF JUSTICE, ANTITRUST DIVISION

30 Broad Street, New York 4, New York

STATE OF NEW YORK }
COUNTY OF NEW YORK }

Edward S. Stimson, being first duly sworn, deposes and swears, upon information and belief based upon a long and thorough investigation, that the facts alleged in the foregoing complaint are true.

/s/ EDWARD S. STIMSON
EDWARD S. STIMSON

Sworn to and subscribed before me this 27th day of January, 1945.

/s/ ALMA M. ABBOTT
Notary Public
Notary Public

[NOTARY SEAL]

King's Co. Clk's No. 355, Reg. 200-A-5
N. Y. Co. Clk's No. 419, Reg. 207-A-5
Commission Expires March 30, 1945

My commission expires

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM,
Defendants.

Civil No. 29-446

MOTION FOR PRELIMINARY INJUNCTION

The United States of America, plaintiff, moves the Court for a preliminary injunction restraining the above named foreign corporate defendants, namely Societe Internationale Forestiere et Miniere du Congo, Companhia de Diamantes de Angola, Societe Miniere du Beceka, Societe General de Belgique, De Beers Consolidated Mines, Ltd., Diamond Trading Company, Ltd., Diamond Corporation, Ltd., Consolidated African Selection Trust, Ltd., and Sierra Leone Selection Trust, Ltd., from withdrawing money from banks in the United States and from withdrawing diamonds or other property from safe deposit boxes in the United States and from withdrawing from the United States or selling, transferring or otherwise disposing of property in the United States until such time as this Court shall have determined

the issues of this case and defendant corporations shall have complied with its orders.

The injury to the United States of America from the withdrawal of said deposits, diamonds or other property would be irreparable because sequestration of said property is the only means of enforcing this Court's orders or decree against said foreign corporate defendants. The principal business of said defendants is carried on in foreign countries and they could quickly withdraw their assets from the United States and so prevent enforcement of any order or decree which this Court may render.

(S) HERBERT A. BERMAN
HERBERT A. BERMAN

(S) PATRICK A. GIBSON
PATRICK A. GIBSON

(S) EDWARD S. STIMSON
EDWARD S. STIMSON

Special Assistants to the Attorney General
Attorneys for the Plaintiff

U. S. District Court
Filed
Jan. 29, 1945
S. D. of N. Y.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff,* v. DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIÉTÉ INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM, *Defendants.*	Civil No. 29-446

APPLICATION FOR TEMPORARY RESTRAINING ORDER

The United States of America, plaintiff, upon the facts shown by the verified complaint and by the affidavits of Edward S. Stimson filed herewith, moves the Court for a temporary restraining order without notice restraining the above named foreign corporate defendants, Societe Internationale Forestiere et Miniere du Congo, Companhia de Diamantes de Angola, Societe Miniere du Beceka, Societe Generale de Belgique, De Beers Consolidated Mines, Ltd., Diamond Trading Company, Ltd., Diamond Corporation, Ltd., Consolidated African Selection Trust, Ltd. and Sierra Leone Selection Trust, Ltd., from withdrawing money from banks in the United States and from withdrawing diamonds or other property from safe deposit boxes in the United

States and from withdrawing from the United States or selling transferring or otherwise disposing of property in the United States pending the issuance of a preliminary injunction for the same purpose with the object of preventing the withdrawal, transfer or dissipation of assets in the United States until such time as this Court shall have determined the isues in this case and defendant corporations shall have complied with its orders.

Plaintiff moves the court for the aforesaid temporary restraining order without notice because without it the aforesaid corporate defendants could withdraw deposits from banks in the United States and diamonds from safe deposit boxes in the United States, and dispose of other property in the United States before a hearing could be had and a temporary injunction issue, and should these withdrawals occur this court would be powerless to enforce any order or decree against these foreign corporate defendants and the United States of America would suffer irreparable injury.

(S) Herbert A. Berman
HERBERT A. BERMAN

(S) Patrick A. Gibson
PATRICK A. GIBSON

(S) Edward S. Stimson
EDWARD S. STIMSON

Special Assistants to the Attorney General, Attorneys for the Plaintiff

U. S. District Court
Filed
Jan. 29, 1945
S. D. of N. Y.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT F. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM,
Defendants.

Civil No. 29-446

AFFIDAVIT

STATE OF NEW YORK
COUNTY OF NEW YORK

EDWARD S. STIMSON, being first duly sworn, says that he is a Special Assistant to the Attorney General with headquarters in the Department of Justice Building in Washington, D. C., that he has made the investigation and prepared the complaint in the above entitled cause and there is a great danger that the Court will be unable to enforce its orders, that its jurisdiction will be defeated and that irreparable injury will result to the United States of America unless a temporary restraining order without notice issues, enjoining the foreign corporate defendants, Societe Internationale Forestiere et Miniere du Congo, Companhia de Diamantes de

Angola, Societe Miniere du Bececka, Societe Generale de Belgique, De Beers Consolidated Mines, Ltd., Diamond Trading Company, Ltd., Diamond Corporation, Ltd., Consolidated African Selection Trust, Ltd., and Sierra Leone Selection Trust, Ltd., from withdrawing money from banks in the United States and from withdrawing diamonds or other property from safe deposit boxes in the United States and from withdrawing from the United States or selling, transferring or otherwise disposing of property in the United States.

If said property is withdrawn or transferred as aforesaid the injury will be irreparable because sequestration of said property is the only means which this Court has of enforcing any order or decree which it may render against said foreign corporate defendants. The principal businesses and activities of said defendants are carried on in foreign countries and they could quickly withdraw their assets from the United States and so prevent enforcement of any order or decree which the Court may render. In this way the jurisdiction which this Court has obtained over these defendants would be fruitless because the means of enforcing the final decree would have been removed.

The temporary restraining order should be granted without notice because notice would give defendant foreign corporations an opportunity to remove bank deposits, diamonds and other property from the United States leaving the Court with a possible right to punish for contempt but with no means of carrying out such a disciplinary measure or of enforcing a decree or order against said foreign defendants.

No previous application for similar relief has been made.

(s) Edward S. Stimson
EDWARD S. STIMSON

[NOTARY SEAL]

Sworn to and subscribed before me this 27 day of January, 1945.

(s) ALMA H. ABBOTT
Notary Public
NOTARY PUBLIC
Kings Co. Clk's No. 355, Reg. 200-A-5
N. Y. Co. Clk's No. 419, Reg. 270-A-5
Commission Expires March 30, 1945

U. S. District Court
Filed
Jan. 29, 1945
S. D. of N. Y.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff,* v. DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM, *Defendants.*	Civil No. 29-446

AFFIDAVIT

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

EDWARD S. STIMSON, being first duly sworn, says that the investigation which he has made shows the foreign corporate defendants named herein have endeavored to avoid subjecting themselves to the jurisdiction of the courts of the United States by making their sales abroad only and requiring customers to pay in advance for all purchases.

(s) EDWARD S. STIMSON
EDWARD S. STIMSON

Sworn to and subscribed before me
this 29th day of January, 1945.

(s) JEAN WALICKI
Notary Public

JEAN WALICKI
Notary Public, Queens County No. 3357
Cert. Filed in New York Co., No. 769
Commission Expires March 30, 1946

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff*, v. DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, AEBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM, *Defendants*.	Civil No. 29-446

TEMPORARY RESTRAINING ORDER

This 29th day of January, 1945, there came on for hearing the application of the United States of America for a temporary restraining order without notice, and it clearly appearing from specific facts shown by the verified complaint herein and by the affidavits of Edward S. Stimson that immediate and irreparable injury may result to the United States of America before notice can be served and a hearing had upon said motion, in that the corporate defendants could quickly withdraw their assets from the United States and thus prevent enforcement of any order or decree which this Court may render because, although they do business in the United States, their principal properties are in foreign countries and their principal business is carried on there; and it further appearing that this order should be granted without

notice because notice would give the foreign corporate defendants an opportunity to remove bank deposits, diamonds and other property from the United States, leaving the Court with a right to punish for contempt but with no means of carrying out such a disciplinary measure or of enforcing a decree or order against said foreign corporate defendants, it is now

ORDERED that said foreign corporate defendants, namely, Societe Internationale Forestiere et Miniere du Congo, Compania de Diamantes de Angola, Societe Miniere du Beceka, Societe Generale de Belgique, De Beers Consolidated Mines, Ltd., Diamond Trading Company, Ltd., Diamond Corporation, Ltd., Consolidated African Selection Trust, Ltd., and Sierra Leone Selection Trust, Ltd., each and all of them, their officers, agents, servants, employees and attorneys, and all persons having notice of this order, be restrained from withdrawing money from banks in the United States and from withdrawing diamonds or other property from safe deposit boxes in the United States and from withdrawing from the United States or selling, transferring or otherwise disposing of property in the United States, and that all persons having notice of this order be enjoined from assisting said corporate defendants, their officers, agents, servants, employees, and attorneys to violate this order; and it is further

ORDERED that this restraining order shall expire upon the decision of plaintiff's motion for a preliminary injunction or ten days from the date and hour of its issuance as hereinafter endorsed hereon, whichever is sooner, unless extended or dissolved by further order; and it is further

ORDERED that plaintiff's motion for a preliminary injunction be set down for hearing on the 2nd day of February, 1945, at 10:30 o'clock A. M., in Room 506 of this Court House, and it is further

ORDERED that service upon the corporate defendants on or before 6:00 o'clock P. M. of the 30th day of January, 1945, of notice that plaintiff's motion for a preliminary injunction will be heard at the aforesaid time shall be deemed a timely notice; and it is further

ORDERED that this order be filed forthwith in the office of the Clerk of this Court and entered of record.

Issued at New York, New York, on this 29th day of January, 1945, at 11:18 o'clock A. M.

(s) VINCENT L. LEIBELL
United States District Judge

U. S. District Court
Filed Jan. 29, 1945
11:35 A. M.
S. D. of N. Y.

U. S. v. *De Beers, et al*

RETURN ON SERVICE

I hereby certify and return that I served a copy of the Summons, Complaint, Affidavits, Application for Temporary Restraining Order, Temporary Restraining Order and Motion for Preliminary Injunction on the following defendants, to wit:—

DE BEERS CONSOLIDATED MINES LTD. *By Serving*:

Jan. 30 Sydney H. Ball at 26 Beaver Street, New York, N. Y. as general agent and cashier.

" 30 Rogers, Mayer & Ball by Lucius Mayer, partner at 26 Beaver Street, New York, N. Y. as general agent and cashier.

" 30 N. W. Ayer & Son, Inc. by Howard G. Rosen, Vice President, at 30 Rockefeller Plaza, New York, N. Y., as general agent and cashier.

" 30 Banque Diamantaire Anversoise S. A. by Michael Romanenko, at 630 Fifth Avenue, New York, N. Y., as general agent and cashier.

DIAMOND CORPORATION, LTD.

Jan. 30 Sydney H. Ball at 26 Beaver Street, New York, N. Y., as general agent and cashier.

" 30 Rogers, Mayer & Ball by Lucius Mayer, partner at 26 Beaver Street, New York, N. Y., as general agent and cashier.

" 30 N. W. Ayer & Son, Inc. by Howard G. Rosen, Vice President, at 30 Rockefeller Plaza, New York, N. Y., as general agent and cashier.

" 30 Banque Diamantaire Anversoise S. A. by Michael Romanenko, at 30 Rockefeller Plaza, New York, N. Y., as general agent and cashier.

DIAMOND TRADING CORPORATION, LTD.

Jan. 30 Sydney H. Ball at 26 Beaver Street, New York, N. Y., as general agent and cashier.

" 30 Rogers, Mayer & Ball by Lucius Mayer, partner at 26 Beaver Street, New York, N. Y., as general agent and cashier.

" 30 N. W. Ayer & Son, Inc. by Howard G. Rosen, Vice President, at 30 Rockefeller Plaza, New York, N. Y., as general agent and cashier.

" 30 Banque Diamantaire Anversoise S. A. by Michael Romanenko, at 630 Fifth Avenue, New York, N. Y., as general agent and cashier.

(signed)

JAMES E. MULCAHY
U. S. Marshal, SDNY.

U. S. District Court
Filed
Feb. 5, 1945
S. D. of N. Y.

DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff*, v. DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM, *Defendants*.	Civil No. 29-446

MODIFICATION OF TEMPORARY RESTRAINING ORDER

This 31st day of January 1945 the United States of America by its attorney Edward S. Stimson, applied for a modification of the temporary restraining order heretofore granted in this cause on the 29th day of January 1945, the modification being for the purpose of making it clear that the order does not apply to the funds of persons having notice of the order but only to the funds of the corporate defendants. It is therefore

ORDERED that the temporary restraining order heretofore granted in this cause on January 29, 1945 be and the same is hereby modified by adding the words "belonging to de-

fendants" after the word "money" in line 9, and after the word "property" in lines 10 and 12, all of the first full paragraph on page 2 of said temporary restraining order.

Issued at New York, New York, on this 31st day of January 1945, at 10:15 o'clock A. M.

VINCENT L. LEIBELL
United States District Judge

U. S. District Court
Filed
Jan. 31, 1945
S. D. of N. Y.

DISTRICT COURT OF THE UNITED STATES

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff*, v. DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM, *Defendants*.	Civil No. 29-146

MODIFICATION OF TEMPORARY RESTRAINING ORDER

This 31st day of January, 1945 the United States of America by its attorney, Edward S. Stimson, applied for a modification of the temporary restraining order heretofore granted in this cause on the 29th day of January, 1945, the modification being for the purpose of releasing property on board the ship S. S. Talisman of the Barber Lines, Inc. and on the dock for loading therein belonging to or for shipment to Societe Internationale Forestiere Et Miniere du Congo (Forminiere) or Societe Miniere du Beceka (Beceka) and to be used in the mining of diamonds and tin in the Belgian Congo. It is estimated that the value of this property is $14,650 and that $5,000 of the purchase price is yet unpaid

and that an additional $2,000 will be required to cover handling, freight and other charges. It is therefore

ORDERED that the temporary restraining order heretofore granted in this cause on January 29, 1945 be and the same is modified to permit the removal from the United States of the aforesaid property of Forminiere or Beceka in the S. S. Talisman and on the docks for loading therein and to permit the forwarding to Forminiere or Beceka of the shipping papers relating thereto and that Forminiere or S. H. Ball be permitted to withdraw $7,000 from the account at the Chase National Bank in the name of S. H. Ball, Consulting Geologist, Forminiere for the purpose of completing payment for the aforesaid property and the handling, freight and other charges thereon.

Issued at New York, N. Y.
on this 31st day of January, 1945
at 10:15 o'clock, A. M.

s/ VINCENT L. LEIBELL
United States District Judge

U. S. District Court
Filed
Jan. 31, 1945
S. D. of N. Y.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM;
Defendants.

Civil No. 29-446

ORDER EXTENDING AND AMENDING TEMPORARY RESTRAINING ORDER

On the second day of February, 1945, at 10:30 o'clock A.M., the motion of the United States of America for a preliminary injunction came on for hearing and Robert T. Swaine, John Wood and James B. Alley made statements as officers of the court as set out in the attached affidavit of Edward S. Stimson and it appearing that there is good cause for postponing the hearing of the motion of the United States for preliminary injunction in that time is needed to communicate with the officers of the foreign corporate defendants, said officers being abroad, and time will be needed by any attorneys whom they may authorize to act for them to prepare for argument on the motion; it is therefore

ORDERED that the temporary restraining order heretofore granted on January 29, 1945 as modified by the two orders signed and filed on January 31, 1945 be amended to read as stated in subsequent paragraphs and as amended be extended to 12 o'clock midnight, February 16, 1945, or to the entry of the order on plaintiff's motion for a preliminary injunction, whichever is sooner, and that the amended and extended order read as follows:

ORDERED that said foreign corporate defendants, namely, Societe Internationale Forestiere et Miniere du Congo, Companhia de Diamantes de Angola, Societe Miniere du Beceka, Societe Generale de Belgique, De Beers Consolidated Mines, Ltd., Diamond Trading Company, Ltd., Diamond Corporation, Ltd., Consolidated African Selection Trust, Ltd., and Sierra Leone Selection Trust Ltd., each and all of them, their officers, agents, servants, employees and attorneys, and all persons having notice of this order be restrained from withdrawing money belonging to the corporate defendants from banks in the United States and from withdrawing diamonds or other property belonging to the corporate defendants from safe deposit boxes in the United States and from withdrawing from the United States or selling, transferring or otherwise disposing of property belonging to the corporate defendants in the United States, and that all persons having notice of this order be enjoined from assisting said corporate defendants, their officers, agents, servants, employees and attorneys to violate this order; and it is further

ORDERED that this temporary restraining order shall not apply to monies or funds which, after January 29, 1945, are paid or transmitted abroad through banks in the United States for account of or credit to any of the corporate defendants by or on behalf of persons other than the corporate defendants, where such payments or transfers are made for diamonds to be delivered from outside the United States to or for the account of such persons; nor shall this order apply

to diamonds so purchased after January 29, 1945; and this temporary restraining order shall not apply to funds sent by the foreign corporate defendants from outside of the United States after January 29, 1945 for the purpose of paying for mining machinery equipment and supplies purchased for shipment abroad, and for expenses incident thereto, nor to the aforesaid mining machinery equipment and supplies purchased with said funds. Any bank through which any payment or transfer is made after January 29, 1945 for credit to or account of any of the corporate defendants by or on behalf of persons other than the corporate defendants and any bank which receives any payment or transfer of funds made on behalf of the corporate defendants from outside the United States after January 29, 1945 for payment or transfer to any person other than the defendants, may assume in the absence of knowledge to the contrary, that this order does not apply to such payment or transfer; and it is further

ORDERED that this restraining order shall be and remain subject to the provisions of the two modifying orders signed and filed on January 31, 1945; and it is further

ORDERED that this restraining order shall expire at 12 Midnight on February 16, 1945 or on the entry of the order on plaintiff's motion for a preliminary injunction, whichever is sooner, unless extended or dissolved by further order of the court; and it is further

ORDERED that plaintiff's motion for a preliminary injunction be set down for hearing on the 13th day of February 1945 at 10:30 o'clock A.M.; and it is further

ORDERED that this order be filed forthwith in the office of the Clerk of this Court and entered on record.

Issued at New York, New York, on this 6th day of February 1945 at 10:20 o'clock A.M.

/s/ VINCENT L. LEIBELL
United States District Judge

U. S. District Court
Filed
Feb. 6, 1945
S. D. of N. Y.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff*, v. DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM, *Defendants*.	Civil No. 29-446

AFFIDAVIT

EDWARD S. STIMSON, being first duly sworn deposes and says that he is a Special Assistant to the Attorney General with headquarters in Washington, D. C. and that at 10:30 o'clock on February 2, 1945 he was present in Judge Vincent L. Leibell's courtroom, Room 506, United States Court House, Foley Square, New York, when the motion of the United States for a preliminary injunction in the above-entitled cause which was noted for hearing at that time was called, and that he heard what took place there, which was as follows:

That Herbert A. Berman, Special Assistant to the Attorney General, Washington, D. C., Attorney for the United States of America in the above-entitled cause answered that

the United States was ready to argue for the motion; that Robert T. Swaine of Cravath, Swaine & Moore said that he wished to make a statement as an officer of the court, that he was not authorized to appear for any of the defendants, that he had a cable from South Africa, that he could not say on the basis of this cable that he was authorized to represent De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd. and Diamond Trading Company, Ltd. that he would probably get instructions and that he needed time to communicate further with South Africa, and that if he were authorized to represent the three corporations he needed time to become acquainted with the case and prepare for argument; that John Wood of Root, Clark, Buckner & Ballantine stated, as an officer of the court that he was not appearing on behalf of any party but that he had been consulted by certain of the individual defendants on whom process had been served as alleged representatives of foreign corporations, that he believed such individual defendants had no authority to retain counsel to represent any of the foreign corporations or to authorize any action on their behalf and that time was needed to communicate to such foreign corporate defendants the facts as to the institution of this action; that James B. Alley, as an officer of the court, stated that he had been consulted by and was representing an individual and a corporation which had been served as alleged agents of Societe Generale de Belgique, that he thought Societe Generale de Belgique was not doing business in this country, that time was needed to communicate with Societe Generale de Belgique in order to ascertain the facts and to prepare for argument.

That Judge Vincent L. Liebell said that it appeared that there was not sufficient time for the foreign corporate defendants to employ counsel and for their counsel to prepare for argument of the motion, that good cause had been shown for postponing the argument on the plaintiff's motion for a preliminary injunction and asked counsel to prepare an order postponing the hearing on the motion for a preliminary in-

junction to February 13 and extending the temporary restraining order to February 16.

S/ EDWARD S. STIMSON

Sworn and subscribed to before me
this 5th day of February 1945.

S/ Leo Cohen
LEO COHEN
Notary Public, Kings Co. Clk's No. 52
N. Y. Co. Clk's No. 62, Bronx Co. Clk's No. 5
Commission Expires March 30, 1946

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM,
Defendants.

Civil No. 29-446

ORDER CONTINUING AMENDED TEMPORARY RESTRAINING ORDER

On the 13th day of February 1945, at 10:30 o'clock A. M. the motion of the United States of America for a preliminary injunction came on for hearing and on the application of Edward S. Stimson that the hearing on said motion be postponed until February 23, 1945, at 10:30 A. M. and that the temporary restraining order heretofore granted in this cause be extended to February 26, 1945 at 12 midnight, as set out in the attached affidavit of Edward S. Stimson, and it appearing from said affidavit that there is good cause for postponing the hearing of the motion of the United States for a preliminary injunction in that time is needed to communicate with and receive instructions from the officers of the foreign corporate defendants who are abroad; it is therefore

ORDERED that the amended temporary restraining order issued on February 6, 1945 be extended to 12 o'clock midnight February 26, 1945 or to the entry of the order on plaintiff's motion for a preliminary injunction, whichever is sooner, unless extended or dissolved by further order of this Court; and it is further

ORDERED that plaintiff's motion for a preliminary injunction be set down for hearing on the 23rd day of February 1945, at 10:30 o'clock A. M.; and it is further

ORDERED that this order be filed forthwith in the office of the Clerk of this Court and entered of record.

Issued at New York, New York, on this 14th day of February, 1945 at 3:15 o'clock P. M.

EDWARD A. CONGER
United States District Judge

U. S. District Court
Filed
Feb. 14, 1945
S. D. of N. Y.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff*, v. DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM, *Defendants*.	Civil No. 29-446

AFFIDAVIT

EDWARD S. STIMSON, being first duly sworn, says he is a a Special Assistant to the Attorney General with headquarters in the Department of Justice Building in Washington, D. C.; That he has conferred with counsel for all of the foreign corporations, that they asked for a postponement of the time for arguing the motion for a preliminary injunction because they needed more time to communicate with and receive instructions from the officers of the foreign corporate defendants who are abroad, that he stated to said counsel that the Government was willing to postpone the time for argument of the preliminary injunction ten days provided the temporary restraining order also be extended for the same length of time; that counsel for defendant corporations stated that they had no objection to such an ex-

tension of the temporary restraining order; that he was present in Room 506 of the Federal Court House when the plaintiff's motion for a preliminary injunction came on for hearing before Judge Conger and that he stated that the hearing of the plaintiff's motion was postponed until February 23, 1945, at 10:30 A. M. and that the temporary restraining order heretofore granted in this cause be extended to February 26, 1945, at 12 midnight and that he understood the defendants had no objection; and that counsel for the defendant corporation were present but did not speak.

EDWARD S. STIMSON
EDWARD S. STIMSON

Sworn and subscribed to before
me this 14th day of February, 1945.
LEO COHEN

[NOTARIAL STAMP]

IN THE DISTRICT COURT OF THE UNITED STATES

For the Southern District of New York

United States of America, *Plaintiff,* v. De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd., Diamond Trading Company, Ltd., Societe Generale de Belgique, Societe Miniere du Beceka, Societe Internationale Forestiere et Miniere du Congo, Companhia de Diamantes de Angola, Consolidated African Selection Trust, Ltd., Sierra Leone Selection Trust, Ltd., Russell Johnson Parker, Lute J. Parkinson, Herbert H. Vreeland, Albert E. Thiele, Solomon R. Guggenheim, Clendenin J. Ryan, and George K. Sturm, *Defendants.*	Civil No. 29-446

ORDER EXTENDING TIME TO MOVE, ANSWER OR PLEAD

From the affidavit of Edward S. Stimson executed on the 16th day of February 1945, it appears that there is good cause for extending the time which the defendants have in which to move, answer or plead, in that time is needed to communicate with the officers of the foreign corporate defendants who are abroad and to receive instructions from them; it is therefore

Ordered that the time of the defendants within which to move, answer, or plead, or to move or serve notice of motion with respect to the summons, jurisdiction, complaint and the return of process upon defendants herein be, and the same hereby is, extended to and including the 19th day of March, 1945; and it is further

ORDERED that this order be filed forthwith in the office of the Clerk of this court and entered of record.

Issued at New York, New York on this 16th day of February, 1945 at o'clock P. M.

EDWARD A. CONGER
United States District Judge

U. S. District Court
Filed
Feb. 17, 1945
S. D. of N. Y.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM,
Defendants.

Civil No. 29-446

MOTION

The defendants, De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd., and Diamond Trading Company, Ltd., move the above-named Court that the Marshal's Return on Service, and the purported service of process herein upon them, be quashed, and the complaint dismissed as against them, and each of them, upon the ground that this Court has not, and did not acquire, jurisdiction over the persons of said defendants, or any of them, for the reasons that (1) none of said defendants is an inhabitant of or is found or is doing business within the State of New York, and (2) none of the persons upon whom the purported service of process was made on behalf of said defendants was a person authorized

to accept or receive process on behalf of said defendants, or any of them.

February 23, 1945.

CRAVATH, SWAINE & MOORE,

By WM. DWIGHT WHITNEY

A member of the firm

Attorneys for said defendants,

15 Broad Street,

New York, N. Y.

U. S. District Court
Filed
Feb. 23, 1945
S. D. of N. Y.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff,* v. DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM, *Defendants.*	Civil No. 29-446

ORDER EXTENDING AMENDED TEMPORARY RESTRAINING ORDER

On the 23rd day of February, 1945, at 10:30 o'clock A. M., the motion of the United States of America for a preliminary injunction came on for hearing and counsel for some of the defendant corporations appearing specially and without waiving defenses as to jurisdiction, stated that they needed additional time to prepare for argument of the motion and asked for an adjournment and counsel for the United States of America consented thereto, and it appearing that there is good cause for postponing the hearing of the motion of the United States for a preliminary injunction in that counsel for some of the defendant corporations need additional time to prepare for argument, it is

ORDERED that the amended temporary restraining order issued on February 6, 1945 and extended to February 26, 1945, by an order entered on the 14th day of February, 1945 be extended to 12 o'clock midnight, March 8, 1945 or to the entry of the order on plaintiff's motion for a preliminary injunction, whichever is sooner, unless extended or dissolved by further order of this court; and it is further

ORDERED that plaintiff's motion for a preliminary injunction be set down for hearing on the 2nd day of March, 1945 at 1:30 P.M., and it is further

ORDERED that this order be filed forthwith in the Office of the Clerk of this Court and entered on record.

Issued at New York, New York, on this 26th day of February 1945 at 10:30 o'clock A.M.

s/ SAMUEL MANDELBAUM,
United States District Judge

U. S. District Court
Filed
Feb. 28. 1945
S. D. of N. Y.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff*, v. DE BEERS CONSOLIDATED MINES, LTD., et al., *Defendants*.	Civil No. 29-446

AFFIDAVIT

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

ROBERT T. SWAINE, being duly sworn, deposes and says:

1. I am a member of the firm of Cravath, Swaine & Moore, attorneys for the defendants De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd., and Diamond Trading Company, Ltd.

2. I was informed by representatives of the Standard Bank of South Africa, Ltd. of No. 67 Wall Street, New York City, that on the same day on which the restraining order herein was served upon said bank, it received a cabled remittance from De Beers Consolidated Mines, Ltd. in the sum of $59,320, and that said sum is being held by said bank subject to said restraining order issued by the United States District Court, Southern District of New York, on January 29, 1945, and the amendments and modifications thereof.

(signed) ROBERT T. SWAINE

Sworn to before me this
2d day of March, 1945.

WILLIAM V. KEENAN
Notary Public, Nassau County
Nassau Co. Clk's No. 2138
N. Y. Co. Clk's No. 864 Reg. No. 481-K-6
Bronx Co. Clk's No. 39 Reg. No. 210-K-6
Certificate also filed in Richmond Co.
Commission Expires March 30, 1946

[NOTARIAL SEAL]

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff*,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURGIS, *Defendants*.

Civil No. 29-446

ORDER AMENDING AND EXTENDING TEMPORARY RESTRAINING ORDER

On the 2nd day of March 1945 at 1:30 o'clock P. M. the motion of the United States of America for a preliminary injunction came on for hearing and was argued by counsel for the Government and counsel for some of the corporate defendants, appearing specially and without waiving jurisdiction, and the Court reserved decision on the motion for a preliminary injunction and ordered that the temporary restraining order be extended; counsel for De Beers Consolidated Mines Ltd. asked that the temporary restraining order be modified to permit the continuance of the advertising and publicity campaign and public relations work being carried on in the United States for De Beers Consolidated Mines, Ltd., and counsel for the United States consented thereto

and on March 6, 1945 counsel for Societe Forestiere et Miniere du Congo advised counsel for United States that the exception in the previous order did not permit banks to receive funds from abroad after January 29, 1945 from a corporate defendant for deposit to the credit of corporate defendant and thus Societe Forestiere et Miniere du Congo could not deposit funds in its account at the Chase National Bank for use in paying for purchases of machinery equipment and supplies and counsel for the United States consented to change the order to permit such deposits and payments; it is therefore

ORDERED THAT the amended temporary restraining order issued on February 6, 1945 and extended by subsequent orders be amended to read as stated in subsequent paragraphs and as amended be and the same is hereby extended to 12 o'clock midnight, March 18, 1945 or to the entry of the order on plaintiff's motion for a preliminary injunction, whichever is sooner, and that the amended and extended order read as follows:

ORDERED that said foreign corporate defendants, namely, Societe Internationale Forestiere et Miniere du Congo, Companhia de Diamantes de Angola, Societe Miniere du Beceka, Societe Generale de Belgique, De Beers Consolidated Mines, Ltd., Diamond Trading Company, Ltd., Diamond Corporation, Ltd., Consolidated African Selection Trust, Ltd. and Sierra Leone Selection Trust Ltd., each and all of them, their officers, agents, servants, employees and attorneys, and all persons having notice of this order be restrained from withdrawing money belonging to the corporate defendants from banks in the United States and from withdrawing diamonds or other property belonging to the corporate defendants from safe deposit boxes in the United States and from withdrawing from the United States or selling, transferring or otherwise disposing of property belonging to the corporate defendants in the United States, and that all persons having

notice of this order be enjoined from assisting said corporate defendants, their officers, agents, servants, employees and attorneys to violate this order; and it is further

ORDERED that this temporary restraining order shall not apply to monies or funds which, after January 29, 1945, are paid or transmitted abroad through banks in the United States for account of or credit to any of the corporate defendants by or on behalf of persons other than the corporate defendants, where such payments or transfers are made for diamonds to be delivered from outside the United States to or for the account of such persons; nor shall this order apply to diamonds so purchased after January 29, 1945; and this temporary restraining order shall not apply to funds sent by the foreign corporate defendants from outside of the United States after January 29, 1945 nor to mining machinery equipment and supplies purchased for shipment abroad, or expenses incident thereto, paid for out of any of said funds sent from outside the United States after January 29, 1945. Any bank through which any payment or transfer is made after January 29, 1945 for credit to or account of any of the corporate defendants by or on behalf of persons other than the corporate defendants and any bank which receives any payment or transfer of funds made on behalf of the corporate defendants from outside the United States after January 29, 1945 may assume, in the absence of knowledge to the contrary, that this order does not apply to such payment or transfer or any further payment or transfer of such funds, and it is further

ORDERED that this restraining order shall be and remain subject to the provisions of the two modifying orders signed and filed on January 31, 1945; and it is further

ORDERED that this restraining order shall expire at 12 Midnight on March 18, 1945 or on the entry of the order on

plaintiff's motion for a preliminary injunction, whichever is sooner.

Issued at New York, New York, on this 7 day of March, 1945 at 10:15 o'clock A. M.

SAMUEL MANDELBAUM
United States District Judge

U. S. District Court
Filed
Mar. 7, 1945
S. D. of N. Y.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM,
Defendants.

Civil No. 29-446

AFFIDAVIT

EDWARD S. STIMSON, being first duly sworn deposes and says that he is a Special Assistant to the Attorney General with headquarters in the Department of Justice Building in Washington, D. C., that with the assistance of others he has made an investigation of the extent and nature of business done in the United States by the foreign corporate defendants and that by this investigation he ascertained the following facts:

Societe Internationale Forestiere et Miniere du Congo (Forminiere)

Defendant, Forminiere, is a corporation organized under the laws of the Belgian Congo. While the Belgian Government owns stock interest in this company, the stock which

it owns has no voting power and the Belgian government does not direct its management. At the time of filing of the complaint, aproximately 50% of the voting stock of this company was owned by the defendants, Albert E. Thiele and Herbert H. Vreeland (the latter now deceased), as trustees under the Congo Mines Participation Agreement. Its principal business consists of mining diamonds and marketing them through the Diamond Trading Company, Ltd., pursuant to the unlawful arrangement alleged in the complaint.

Forminiere is the largest producer of industrial diamonds in the world, producing approximately two-thirds of the world's supply. It has in excess of 16,000 employees. All of its property except as hereinafter stated is located outside the United States; all of its officers with the exceptions hereinafter noted also reside outside of the United States. For many years prior to the date of the filing of the complaint herein and up to the present time, the business which the defendant Forminiere has conducted in the Southern District of New York has included the following:

Since about 1910 two directors of said corporation have continuously resided in the Southern District of New York and have continuously performed their duties as Directors of Forminiere.

Since 1910 to date, Sidney H. Ball has been continuously employed by Forminiere as purchasing agent and consulting geologist. Said Sidney H. Ball maintains offices at 26 Beaver Street, New York, New York, and at said offices has continuously performed most of his duties as consulting geologist of Forminiere. Some of the duties performed by Ball are hereinafter described.

Forminiere pays part of the office expenses for the offices maintained by said Ball at 26 Beaver Street. The said Ball, from his offices at 26 Beaver Street, carries on an extensive correspondence on behalf of Forminiere. The stationery which he uses has at the top of its letterhead, in large type, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO and below that, SIDNEY H. BALL, CONSULTING GEOLOGIST. A

copy of said stationery is attached hereto and made part hereof.

For many years prior to the date of the filing of this complaint Forminiere has continuously maintained bank accounts in the Southern District of New York. Since 1910, Forminiere has continuously maintained an account at the Chase National Bank. This account is in the name of "Sidney H. Ball, Consulting Geologist, Forminiere."

Until 1941 the said Ball was authorized by Forminiere to draw on said account by check signed by him. Since 1941, Ball and one of the two American directors of Forminiere were authorized to sign checks on said account.

During the year 1944 the balance maintained by Forminiere in the Chase account ranged from half a million dollars to one million dollars. The account has been a very active one, for example, during the first six months of 1944, approximately 295 checks were drawn on this account. Forminiere also maintained a bank account at the Guaranty Trust Company in the name of "Societe Internationale Forestiere et Miniere du Conga" from May 1939 to January 4, 1944. The balance varied from $7,000 to $44,000. Originally Whelpley and Vreeland were authorized to draw on the account jointly. Later Ball and Sturm were empowered to draw upon it, using checks countersigned by Vreeland or Whelpley.

Forminiere purchases in this country a large portion of the supplies required to house, feed and shelter its more than 16,000 employees, and substantially all of the equipment, machinery and supplies required for the operation of its mines and mills, the greater part of said supplies and equipment being purchased for Forminiere by the said Sidney H. Ball. Ball receives requests for equipment and supplies from Forminiere, selects the supplier and the supplies and equipment required by Forminiere, makes the purchases and pays for them by drawing checks on the bank account in the Chase National Bank described above.

The current purchases of Forminiere in this country aggregate about a million dollars a year. The scope of Balls' agency in the United States is indicated by the circumstance that most of the substantial contracts of purchase reflected in this figure were consummated here by Ball, and the further circumstance that Ball to procure the release of $16,000 frozen by the temporary restraining order in the instant proceedings, represented that he would cause the directors of Forminiere to replace the funds so released, and that following such representation replenishment of the fund was in fact accomplished.

The purchasing activities conducted by Ball in the Southern District on behalf of Forminiere are frequent and continuous. The type of equipment and supplies purchased and the separate purchases are too voluminous to set forth herein. Some of the typical purchases include the following: aluminum and its alloys; chemicals; copper wire; pipes; sheets; diesel engines; a steam shovel; electrical machinery; equipment and supplies; fuel oil; hardware; household equipment; hospital supplies; hydraulic pumps; iron bars and rods; car wheels and axles; castings; lathes; motors; paints, oils and varnishes; plates, rails, railroad truck equipment; typewriters; wire fencing; rubber manufactures; wheelbarrows.

Sidney H. Ball as purchasing agent and consulting geologist for Forminiere carries on from his offices at 26 Beaver Street in the Southern District of New York correspondence with the manufacturers and suppliers in order to conclude the voluminous purchases in part enumerated above. The equipment purchased is consigned by manufacturers and suppliers to Ball and inspected and accepted by him in the Southern District of New York. Ball also arranges for the packaging and transportation of the material and supplies to Forminiere in Africa.

In order to export the supplies and equipment purchased by Forminiere, as above described, Forminiere must obtain export licenses from the United States. Moreover, a large

part of such supplies and equipment comprise critical items, and in order to obtain such material and supplies, Forminiere must obtain priorities from the War Production Board. Ball, as consulting geologist of Forminiere, carries on extensive negotiations and holds numerous conferences with officials of the United States Government in order to obtain priorities and export licenses. In order to obtain such permits one must satisfy the government officials in charge of the matter as to Forminiere's need for the equipment and supplies and as to its importance to the war effort. Ball, as consulting geologist, prepares applications for licenses and priorities in the Southern District; such applications are signed "Societe Internationale Forestiere et Miniere du Congo, by Sidney H. Ball, Consulting Geologist". The supplies and equipment purchased by Forminiere in the Southern District are essential for the continued operation of Forminiere's mines and mills and without such equipment and without such priorities Forminiere would not be able to conduct its business. Since the outbreak of the European war in 1939, the United States has been the principal source of supply for the material above described.

COMPANHIA DE DIAMANTES DE ANGOLA (DIAMANG)

Defendant, Diamang, is a corporation organized under the laws of Portugal. Its principal business consists of mining diamonds and marketing them through the Diamond Trading Company pursuant to the unlawful arrangement alleged in the complaint in this case. Diamang produces several hundred thousand carats of diamonds annually. All of its property, except as hereinafter stated, is situated outside of the United States; all of its officers with the exception subsequently noted, also reside outside the United States. Continuously and for many years prior to the date of the filing of the complaint in this case and up to the present time, Diamang has transacted business in the United States in the

Southern District of New York and the business which the defendant Diamang has so conducted has included the following;

Since before 1915 two directors of said corporation have continuously resided in the Southern District of New York and have continuously performed their duties as directors of Diamang.

Since 1915 and to the date of the filing of the complaint in this case, George K. Sturm has been continuously employed by Diamang as purchasing agent and auditor. Said George K. Sturm maintains offices at 26 Beaver Street, New York, New York and at said offices has continuously performed most of his duties as purchasing agent and auditor of Diamang. Some of the duties performed by Sturm are hereinafter described.

Diamang pays part of the office expenses for the offices maintained by said Sturm at 26 Beaver Street. Sturm, from his office at 26 Beaver Street carries an extensive correspondence on behalf of Diamang. His signature appears on letters at the top of which appear the words COMPANHIA DE DIAMANTES DE ANGOLA and below that, 26 BEAVER STREET. A copy of one of said letters is attached hereto and made a part hereof.

For many years prior to the date of the filing of the complaint in this case Diamang has continuously maintained bank accounts in the Southern District of New York. For many years and to the date of the filing of the complaint in this case, Diamang has continuously maintained an account at the Guaranty Trust Company, New York City. This account is in the name of "Companhia de Diamantes de Angola". The balance maintained in this account is in the neighborhood of $100,000. The account could be drawn upon by the joint signatures of any two of the following three persons, Sturm and the two American directors of Diamang. The account has been an active one.

Diamang purchases in this country a large portion of the supplies required to house, feed and shelter its employees;

and substantially all of the equipment, machinery and supplies required for the operation of its mines and mills, the greater part of said supplies and equipment being purchased for Diamang by the said George K. Sturm, its purchasing agent and auditor. Sturm receives requests for equipment and supplies from Diamang, selects the supplier and the supplies and equipment required by Diamang, makes the purchases and pays for them by drawing checks on the bank account in the Guaranty Trust Company described above.

The supplies and equipment purchased by Diamang in this country amount to several hundred thousand dollars annually. The purchasing activities conducted by Sturm in the Southern District of New York on behalf of Diamang are frequent and continuous. The type of equipment and supplies purchased and the separate purchases are too voluminous to set forth herein. Some typical purchases are as follows: Wire rope, pumps, motors, wrenches, valve refacing machine, grinding wheels, gauges, inserted tooth saws, surveying compasses, steel shovel blades, belt fasteners, and rubber hose.

George K. Sturm, as purchasing agent and auditor for Diamang, carries on from his office at 26 Beaver Street in the Southern District of New York, correspondence with the manufacturers and suppliers in order to conclude voluminous purchases described above. The equipment purchases are consigned by manufacturers and suppliers to Sturm and inspected and accepted by him in the Southern District of New York. Sturm arranges for the packaging and transportation of the material and supplies to Diamang in Africa. Diamang, in order to export the supplies and equipment purchased by Diamang as above described, must first obtain export licenses from the United States. A large part of such supplies and equipment are critical items and in order to obtain them, Diamang must secure a priority from the War Production Board. Sturm, as purchasing agent and auditor of Diamang, carries on extensive negotiations and holds conferences with officials of the United States Government in

order to obtain priorities and export licenses. In order to obtain such permits, it is necessary for Sturm to satisfy Government officials as to Diamang's needs for equipment and supplies and of its importance to the war effort. Sturm, as purchasing agent and auditor, prepares applications for licenses and priorities in the Southern District of New York; such applications are signed George K. Sturm, but the application is made on behalf of "Companhia de Diamantes de Angola". Equipment and supplies purchased by Diamang in the Southern District of New York are necessary for the continued operation of Diamang's mines and mills. Without such equipment and priorities Diamang would not be able to conduct its business.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD.

Defendant De Beers owns 80% of the capital stock of defendant, The Diamond Corporation, Ltd.; the remaining 20% being owned by the Consolidated Diamond Mines of Southwest Africa, which De Beers controls. Defendants De Beers and Diamond Corporation each own 50% of the stock of the Diamond Trading Company. De Beers controls and manages the activities of the Diamond Corporation and the Diamond Trading Company.

All the officers and employees of De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd., and Diamond Trading Company, Ltd. reside outside of the United States and, to the knowledge of deponent, all the property belonging to the three corporations, with the exceptions hereinafter set forth, is located in countries outside of the United States.

The Diamond Trading Company controls and markets, pursuant to the unlawful arrangements described in the complaint, 95% of the world's supply of industrial and gem diamonds. The United States is by far the largest market in the world for gem diamonds and approximately 90% of all

industrial diamonds sold by the Diamond Trading Company are purchased by brokers and dealers located in the United States.

At the time of the filing of the complaint herein and for many years prior thereto, the three companies, De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd. and Diamond Trading Company, Ltd, transacted business in the United States and more particularly in the Southern District of New York. The activities of the three companies in the United States include:

For many years prior to the filing of the complaint, the three companies have followed the practice of regularly sending their officers and employees to the United States to transact the business of the three companies.

Among the officers and employees who come to the United States to transact business for the three corporations are, Sir Ernest Oppenheimer, Chairman of the Boards of De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd. and Diamond Trading Company, Harold Thomas Dickinson, Technical Director of De Beers Consolidated Mines, Ltd., Fergus Rogers, Lute J. Parkinson, Assistant General Manager of De Beers Consolidated Mines, Ltd., and Stanley Routley. Such officers and employees have stayed in the United States for various periods of time for the purpose of transacting business for the three companies. The stay of some of these officers or employees extended over periods of months. Harold T. Dickinson spent most of the years 1941 and 1942 in the United States. Parkinson came to the United States in August, 1943 and his stay in this country lasted until February, 1944. While in this country such officers and employees have maintained offices in the Southern District of New York in space furnished either by the N. W. Ayer & Co., 30 Rockefeller Plaza, New York, N. Y. or by the Newmont Mining Co. of 14 Wall Street, New York, N. Y. While such officers and employees were in the Southern District, in addition to directing the advertising and publicity campaign which the three companies carry on in the United

States, reported to their home office on the market condition in respect to diamonds in the United States; investigated complaints made by customers of the Diamond Trading Company in the United States; conferred with brokers and dealers of diamonds in order to promote the business and good will of the three companies; carried on negotiations with officials of the United States Government in respect of selling large amounts of diamonds; participated in wage negotiations carried on by the diamond cutters of the Diamond Makers Protective Union; displayed and sold certain quantities of diamonds to the trade in this country; and carried on other activities in behalf of the three corporations.

De Beers has for many years maintained bank accounts in the Southern District of New York including accounts with the Standard Bank of South Africa, Ltd. of 67 Wall Street, New York, N. Y., Barclay's Bank, 120 Broadway, New York, N. Y., and Chase National Bank, 18 Pine Street, New York, N. Y., in its own name and in the names of employees.

The three companies presently carry on and have for many years carried on an extensive public relations and advertising campaign in the United States designed to increase their sales of diamonds in this country.

De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd. and Diamond Trading Co. maintained in the New York Worlds Fair in the years 1939 to 1941 an extensive display of diamonds having a value of approximately eight million dollars. After the Worlds Fair closed these diamonds were kept for some time in safe deposit boxes maintained by De Beers at the Chase Safe Deposit Co. and Rockefeller Center Bonded Warehouse. Some of these diamonds were released from bond, customs duty paid by De Beers and sold within the Southern District of New York.

De Beers also contributes sums of money to associations such as the Gemological Institute of America, the American Gem Society, Jewelry Industry Publicity Board, to assist in the activities of these associations which foster the sale of diamonds by promotional and publicity work. De Beers

financed the publication in the United States of certain books such as "The Story of Diamonds" issued by the Chicago Jewelers' Association and "Famous Diamonds of the World." Both of these books are sold in the United States by the Gemological Institute of America.

De Beers employs the N. W. Ayer & Co., 30 Rockefeller Plaza, New York, N. Y., to assist in its advertising and public relations work in this country.

The three companies regularly advertise in leading publications in the United States. This advertising is designed to increase the sale of diamonds by the three companies in this country. As a result of the advertising, their sales have materially increased. Some of the advertisements set forth retail prices of diamonds for the purposes alleged in the complaint, tampering with, fixing and maintaining retail prices of gem diamonds in the United States. In addition to the advertising, N. W. Ayer engages in extensive publicity and public-relations campaign in the United States on behalf of De Beers Consolidated Mines, Ltd., the Diamond Trading Company and the Diamond Corporation, Ltd. One of the purposes of the campaign is to discourage, eliminate and counteract publicity unfavorable to our critical of De Beers and its subsidiaries. Another purpose of the publicity campaign is to increase the sales of diamonds in this country and to promote good-will.

In addition to the advertising and public relations work referred to above N. W. Ayer & Son, Inc. performed many services in the United States as agents for De Beers Consolidated Mines, Ltd., Diamond Corporation and Diamond Trading Company, Ltd. It investigates retail prices of diamonds by using shoppers, reports on Government price regulations for diamonds, reports complaints made by customers of the Diamond Trading Co., investigates the number, wages, hours and union membership of diamond cutters in New York and Philadelphia; supplies office facilities for officers and employees of De Beers while they are in the United States, and receives and forwards mail for them. De

Beers Consolidated Mines, Ltd., Diamond Corporation Ltd. and Diamond Trading Co. have displayed and sold diamonds in the United States following the Worlds Fair.

The three companies displayed the diamonds which they had in this country at the Worlds Fair at the offices of N. W. Ayer for the purpose of securing customers for such diamonds. Officers of De Beers then in the United States sold some of the aforesaid diamonds at offices which the Diamond Trading Company then maintained at 30 Rockefeller Plaza, New York, N. Y. during May and June, 1941.

Harold Thomas Dickinson referred to above, an officer of defendant De Beers Consolidated Mines, Ltd., while in New York in 1941 and 1942 carried on negotiations with officials of the U. S. Treasury for the purpose of selling them large quantities of industrial diamonds and sold several million dollars worth of industrial diamonds. Some of the diamonds so sold were brought by Dickinson to the United States and there shown to officials of the Treasury, and sold by Dickinson to the Treasury Department. All the diamonds purchased by the United States Government were shipped by The Diamond Trading Company to the United States, inspected and payment made by the United States Government after delivery, inspection and acceptance in this country.

On or about September 1942 the Diamond Trading Company contracted to sell four and a half million carats of diamonds to the Metals Reserves Co., 811 Vermont Avenue, N. W., Washington, D. C. The contract provided for payment to the Diamond Trading Co. after the Diamond Trading Co. had shipped the material to New York and after inspection and acceptance of the material by representatives of the Metals Reserve Co. in the Southern District of New York.

Subsequently, the U. S. Commercial Co., an agency of the United States, entered into two contracts with the Diamond Trading Company, one on August 9, 1944, of 6,000 carats of industrial diamonds and another in 1943 of 10,000 carats of industrial diamonds. Contracts provided that the diamonds would be delivered by the Diamond Trading Com-

pany to the U. S. Commercial Co. at 60 Beaver Street, New York, N. Y. and that payment would be made after arrival of the stones in New York and after inspection and acceptance of the stones by persons designated by U. S. Commercial Co. Approximately eighty per cent of the diamonds delivered under the August 9, 1944 contract were returned to the Diamond Trading Company because they were not satisfactory. Defendants De Beers Consolidated Mines, Ltd.; Societe Generale de Belgique and Societe Internationale Forestiere et Miniere du Congo own and control the Banque Diamantaire Anversoise of 630 Fifth Avenue, New York, N. Y. and defendants De Beers Consolidated Mines, Ltd. utilizes such bank as a Credit Department of the Diamond Trading Co. in the United States. The sole business of the Banque Diamantaire consists of the financing of the purchase of diamonds. Approximately 75% of this business consists of financing brokers and dealers located in the United States who wish to purchase diamonds from the Diamond Trading Company. The Diamond Trading Company ships many of the diamonds so financed and purchased by brokers and dealers in the United States to the aforesaid bank for delivery by it to such customers and brokers in the United States.

The Banque Diamantaire also furnishes credit information concerning prospective American purchasers to the Diamond Trading Company and otherwise assists the Diamond Trading Company's operations in the United States.

s/ EDWARD S. STIMSON
EDWARD S. STIMSON

Sworn to and subscribed before me
this 9th day of March, 1945.
s/ JEAN WALICKI
Notary Public
JEAN WALICKI
Notary Public, Queens County No. 3357
Cert. Filed in New York Co. No. 760
Commission Expires March 30, 1946

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT LTD., RUSSEL JOHNSON PARKER, LUTE J. DENIN J. RYAN, AND GEORGE K. STURM,
Defendants.

Civil No. 29-446.

EXEMPTION FROM TEMPORARY RESTRAINING ORDER

On this 16th day of March, 1945, counsel for Companhia de Diamantes de Angola, appearing specially and without waiving objections to jurisdiction, represented to counsel for the Government that the right to hold shipping space reserved on behalf of Companhia de Diamantes de Angola would be lost unless assurances could be given that it would be used, and requested that the machinery, equipment and supplies listed below, which had been paid for, be released from the temporary restraining order so that they can be exported to Companhia de Diamantes de Angola in Africa in said shiping space; and George K. Sturm having promised that he would endeavor to have Companhia de Diamantes de Angola deposit the value of said machinery, equipment and supplies in its bank account at the Guaranty Trust Company to be held subject to said temporary restraining order and that he believed Companhia de Diamantes de Angola

would do so; and counsel for the Government consented thereto. The said machinery, equipment and supplies, with aproximate quantities are as follows:

Paid for by check:		*Amount*
Saw mill parts		$1,116.16
8,100 lbs. of Electrodes (used for welding)		606.05
3 reels and 7 coils of bare copper wire and cable		662.34
500 ft. of 3" water Hose (used for sluicing)		435.00
3,300 ft of flexible electric cord		53.42
5,000 shovel blades		3,850.00
10 pcs ⅜" x 8" steel plates		143.35
26 Barcalo and Stillson wrenches		61.22
20 Hacksaw Frames		
110 boxes of Belt fasteners		161.84
30 pces Belt fasteners		78.82
90 sets of cutting taps		
41 pces bearings		41.87
3 surveying compasses		99.90
		$7,309.97
Paid for under Letters of Credit:		
33 pces of steel sheets	$292.91	
Milling cutters	456.82	749.73
		$8,059.70

it is therefore

ORDERED, that the order issued herein on March 7, 1945, at 10:15 o'clock A. M., as extended by an order issued on the same day as this order, be and the same is modified to permit the removal from the United States of the above mentioned property of Companhia de Diamantes de Angola and to permit the forwarding to Companhia de Diamantes de Angola of all shipping papers relating thereto.

Issued at New York, N. Y., on this 16th day of March, 1945, at 10:30 o'clock A. M.

s/ SAMUEL MANDELBAUM
United States District Judge.

IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM,
Defendants

CIVIL NO.
No. 29-446

ORDER CONTINUING TEMPORARY RESTRAINING ORDER

On the 13th day of March 1945 at 4:00 o'clock P. M. at a conference in Judge Mandelbaum's chambers in the United States Court House, Foley Sq., New York, New York, at which were present Judge Samuel Mandelbaum and counsel for the Government and for each of the corporate defendants, Judge Mandelbaum stated that it would take him some time to decide the Government's motion for a preliminary injunction in the above entitled cause and counsel for the Government then pointed out that the existing temporary restraining order expired on Sunday, March 18, 1945, that it took about three days to renew the temporary restraining order

and to serve the 26 banks and asked that the temporary restraining order be continued for an additional 10 days or until the ruling on the Government's motion for a preliminary injunction whichever was sooner, and Judge Mandelbaum stated that he would renew the temporary restraining order; and it appearing that there is good cause for continuing the temporary restraining order in that the Court needs time to consider and decide the motion for a preliminary injunction; it is therefore

ORDERED that the order issued on March 7th, 1945 amending and extending the temporary restraining order be and the same hereby is extended and continued to 12 o'clock midnight, March 28, 1945 or to the entry of the order on plaintiff's motion for a preliminary injunction, whichever is sooner, unless extended or dissolved by further order of this court; and it is further

ORDERED that this order be filed forthwith in the office of the Clerk of this court and entered of record.

Issued at New York, New York, on this 16th day of March, 1945 at 10:30 o'clock A. M.

s/ SAMUEL MANDELBAUM
United States District Judge

U. S. District Court
Filed
March 16, 1945
S. D. of N. Y.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON, PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM,
Defendants.

Civil No. 29-446.

ORDER CONTINUING TEMPORARY RESTRAINING ORDER

At a hearing in this matter before Judge Samuel Mandelbaum on the 21st day of March, 1945, at which were present counsel for the Government and for each of the corporate defendants, Judge Mandelbaum allowed the filing of further affidavits by Tuesday, March 27, 1945, and it appearing that there will not be sufficient time after March 27, 1945 to extend the temporary restraining order which expires March 28, 1945, and it appearing that there is good cause for continuing the temporary restraining order in that there will not be sufficient time after the 27th to extend the same before its expiration on March 28th and in that the Court will need more than one day in which to decide the motion for a preliminary injunction after the aforesaid affidavits are filed; it is therefore

ORDERED that the order issued on March 7, 1945 amending and extending the temporary restraining order, as modified by an order exempting certain property issued March 16, 1945, be, and the same hereby is, extended and continued to 12 o'clock midnight April 7, 1945 or to the entry of the order on plaintiff's motion for a preliminary injunction, whichever is sooner, unless extended or dissolved by further order of this court; and it is further

ORDERED that this order be filed forthwith in the Office of the Clerk of this Court and entered of record.

Issued at New York, N. Y. on this 27th day of March, 1945 at 11:50 o'clock A.M.

s/ SAMUEL MANDELBAUM
United States District Judge

U. S. District Court
Filed
Mar. 27, 1945
S. D. of N. Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff,* v. DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM. *Defendants.*	Civil No. 29-446

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

AFFIDAVIT OF WARNER S. SHELLY

WARNER S. SHELLY, being duly sworn, deposes and says:

I am and have been since November, 1938, a vice-president of N. W. Ayer & Son, Inc. (hereinafter called Ayer), referred to in the complaint in the above-entitled suit. From May, 1939, until November, 1944, I had general charge or supervision of the services rendered by Ayer to De Beers Consolidated Mines, Ltd. (hereinafter called De Beers), one of the defendants in said suit. As a vice-president of Ayer, I am familiar with the business and affairs of Ayer, including all services heretofore and now being rendered by Ayer to De Beers. I am also familiar with the facts hereinafter

stated with respect to the business and affairs of De Beers and the business and affairs of Diamond Corporation, Ltd. and Diamond Trading Company, Ltd., two other defendants in said suit, my familiarity with these facts being the result of correspondence with De Beers, and conversations with officers of the said three defendants and personal observation, principally in South Africa.

Service of the summons and complaint in said suit has been attempted to be made on said three defendants by serving Ayer.

De Beers is in the business of mining and selling diamonds and a diamantine substance known as boart. Diamonds are sold by De Beers in the condition in which they come from the mines. Such diamonds are called rough diamonds, and fall into two classes, (1) those suitable for manufacture into cut gem diamonds (sometimes called polished diamonds) and (2) those suitable for industrial use (commonly called industrial diamonds). These rough diamonds, in the case of gem diamonds, are merely the raw materials out of which are manufactured the ultimate product used by the consuming public, i.e., cut gem diamonds. The mining operations of De Beers are carried on in the Union of South Africa and sales by De Beers are made chiefly, if not wholly, in Africa.

Diamond Corporation, Ltd. and Diamond Trading Company, Ltd. are in the business of buying and selling rough diamonds and boart. Their business is carried on chiefly, if not wholly, in Africa and England.

During the period May, 1939, to date (being the period of activity with which affiant is familiar) none of the officers or directors of any of said three defendants resided in the United States except for temporary residence during visits hereinafter described, and no corporate meetings were held in the United States.

Ayer's business is entirely different in nature from the business of said three defendants. Ayer is in the advertising business. It is one of the oldest and largest advertising firms

in the United States, and has many clients in this country and abroad.

Ayer has never performed any services of any character for, or had any business relations with, the defendant, Diamond Corporation, Ltd., or the defendant, Diamond Trading Company, Ltd., although Ayer has done personal favors for officers of one or both of said corporations while they were in the United States.

As an independent contractor, and not as an agent, Ayer has been engaged by De Beers to plan and carry out an advertising and publicity campaign to stimulate the purchase, by the consuming public from retail dealers, of cut gem diamonds, a product not sold by any of said three defendants. The product thus advertised by Ayer is fabricated from raw diamonds mined or sold by said three defendants and others, but is not fabricated by any of those defendants. Between the mining and sale of rough gem diamonds by said three defendants and the sale to the consuming public of the ultimate product advertised by Ayer, the diamonds pass through many hands, all wholly independent of said three defendants, including brokers and dealers in rough diamonds, fabricators commonly called diamond cutters, and wholesalers and retailers of the finished product. Over these intermediate steps between the sale of the raw material by said three defendants and the purchase of the finished product by the ultimate consumers, none of said three defendants has any control. The prices charged to the ultimate consumer for the finished product are many times the price of the raw material sold by said three defendants. The sale of industrial diamonds is not the object of said advertising and publicity campaign.

Ayer is not a managing agent, or a general agent, or a cashier of any of said three defendants, and neither Ayer nor any of its officers or employees has ever been authorized by any of said three defendants to receive process on its behalf in a suit against it. Ayer has no proprietary interest of any kind, direct or indirect, in any of the said three de-

fendants, and the said three defendants, respectively, have no proprietary interest of any kind, direct or indirect, in Ayer. None of Ayer's officers, directors, or employees is an officer, director, or employee of any of said three defendants.

Ayer has never been authorized to make, and has never made, contracts of any kind for said defendants. Ayer has never been authorized to make, and has never made, purchases of any kind for said defendants. Ayer has never been authorized to adjust or negotiate adjustments of claims of customers of said defendants, and has never done so. Ayer has never been authorized to investigate, and has never investigated complaints of such customers.

Ayer has never been authorized to take or transmit, and has never taken or transmitted, orders for products sold by any of said three defendants. Ayer has never been authorized to send out, and has never sent out, bills or invoices for any of said defendants, and has never been authorized to make, and has never made, collections for any of said defendants. Ayer has never carried for sale or display products sold by any of said three defendants. Ayer has never been authorized to engage, supervise or discharge, and has never engaged, supervised or discharged, any of the employees of said defendants. Ayer has never kept books of accounts or records of sales of said defendants.

Ayer has never been in charge of cash of any of said defendants, and has never been authorized to draw, and has never drawn, on a bank account of any of them.

Neither Ayer nor any of its officers, agents or employees has ever been authorized to do or transact, or has ever done or transacted, any of the business of said defendants.

Origin and Purpose of the Diamond Advertising and Publicity Campaign

In September, 1938, Gerold M. Lauck and Paul L. Lewis, two officers of Ayer, had interviews in New York with Harry F. Oppenheimer, an officer of De Beers, who, affiant is informed, had come to the United States to make arrange-

ments for a diamond exhibit at the New York World's Fair of 1939. This was the earliest contact between Ayer and De Beers. At said interviews, Ayer's representatives were asked whether a national advertising and publicity campaign to stimulate retail sales of cut gem diamonds in the United States could be made sufficiently effective to justify an expenditure by De Beers for such a campaign, and if so, what the plan of the campaign should be. The objective of De Beers in stimulating retail sales of cut gem diamonds in the United States was indirectly to stimulate wholesale sales of rough gem diamonds in Africa and London.

Ayer's representatives stated that De Beers' questions could not be answered without the aid of a survey and study of the American consumer market for diamonds and its potentialities. This advice was confirmed by a letter to Harry F. Oppenheimer dated September 6, 1938, in which Ayer offered to make the necessary survey and study for a fee of not exceeding $10,000. The offer was accepted by De Beers by a letter dated at London December 2, 1938.

Ayer made the survey and study above referred to, and submitted a report to De Beers dated April, 1939. Gerold M. Lauck, an executive vice-president of Ayer, went to London and South Africa to present the report and discuss the recommendations contained therein. The report recommended that De Beers appropriate approximately $500,000 per annum for three years for a diamond advertising and publicity campaign, a general plan for which was outlined in said report. Late in May, 1939, De Beers by cable from South Africa authorized Ayer to proceed with said campaign in accordance with the recommendations in said report. On June 22, 1939, Ayer signed an acceptance of a letter from De Beers which stated the arrangement under which Ayer was to handle said campaign for De Beers. Said letter was signed on behalf of De Beers by H. T. Dickinson in the United States. Dickinson was then in the United States on a holiday and in connection with the diamond exhibit at the New York World's Fair of 1939.

The object of said campaign is clearly indicated in said report. At the outset, the report pointed out that the value of imports into the United States of diamonds, cut and uncut, but not set, in 1926 was 23.8% less than in 1919, and in 1938 was 62.6% less than in 1926; that the number of carats of such imports in 1926 was 2.9% less than in 1919, and in 1938 was 46.7% less than in 1926; and that the decline in volume was evidently accompanied by a shift to smaller or poorer quality stones. The report contrasted these declines in diamond imports with the rises that had taken place in the same period in sales of well-advertised "luxury" products of other kinds. The report said:

> "The evidence developed by our study establishes the fact that there exists a very real and sound foundation on which to build a conservative plan for diamond promotion. We are certain that if the competition of other luxuries is met in kind, if the younger people are educated to an appreciation of diamonds, and if the jeweler is encouraged to put more effort behind his own diamond selling, *the present situation can be fully capitalized upon, and a marked and long-term increase in the value of diamond imports effected.*" [The words here underscored are italicized in the report.]
>
> "The present state of the market is the result, in part, of recent economic conditions, but the long-term downward trend has been caused by a change in social attitudes, in style and fashion trends, and by the vigorous promotion of competitive luxuries. * * *
>
> "The purpose of the studies presented in this report has been not only to establish facts regarding the distribution of diamonds, but to explore the public mind as to its attitude toward diamond ownership.
>
> "For it is the public, particularly those millions in the middle-income group, who must be influenced in their thought, taste, habits and fashions, if the sale of diamonds is to be appreciably increased."
>
> "Coming logically to the conclusion that a definite plan of educational promotion must be undertaken, if the long-term decline in diamond sales is to be arrested and increased business hoped for, the question of plan and procedure naturally follows. * * *

"First of all, we believe that De Beers Consolidated Mines, Ltd., independent of any action by diamond importers or retail merchants, should undertake a long-term campaign of advertising and publicity in the United States. * * *

"But the campaign should be a continuous one, educational in character. * * *

"We feel that your advertising should aim to accomplish these objectives:

"(1) Protect and encourage the tradition of the diamond engagement ring.

"(2) Increase the average value of the diamonds bought for engagements.

"(3) Increase the sale of all types of diamond jewelry in the general luxury market in competition with other promoted types of luxury merchandise."

The object of said campaign was also stated from time to time in announcements addressed to jewelers, which Ayer caused to be published in diamond trade journals. Extracts from some of these announcements follow:

"An unprecedented announcement affecting every jeweler in America: Within the week, DIAMONDS will be Nationally Advertised. * * * It [the diamond advertising campaign] is designed to protect and increase your diamond business and to stimulate public demand for finer stones."

"In 144,000,000 advertisements this coming year, this promotion sells an idea—the *diamond*—to help you sell diamond merchandise. You buy nothing, you contribute nothing."

"All [advertisements] are dedicated to the purpose of making your customers want diamonds—better ones, larger ones than ever before."

"The 46,000,000th advertisement has been released in the long-term national promotion of diamonds in competition with other promoted luxuries. Soundly based on your own answers and the answers of your customers to the National Survey—addressed to the people who are your potential customers—stressing the selection of finer stones—costing you not an extra penny!"

"Who's Behind All This Talk About Diamonds?

"You are! For your diamond sales present and future, determine De Beers diamond sales—therefore they are the whole underlying purpose of the great national campaigns which have set all America talking diamonds."

These announcements addressed to jewelers did not solicit orders for purchases of diamonds from De Beers or from Diamond Corporation, Ltd., or Diamond Trading Company, Ltd.

Work Done by Ayer in Connection With the Diamond Advertising and Publicity Campaign

From the summer of 1939 up to the present time Ayer has been carrying out, in whole or in part, the program outlined in Ayer's report to De Beers dated April, 1939. For a period of one year, September, 1942—August, 1943, the consumer advertising was discontinued, and the trade paper advertising and the publicity were carried on. Annual budgets for the cost of these services to De Beers were submitted by Ayer to De Beers. Gerold M. Lauck and affiant each made two trips to South Africa for the purpose of submitting budgets to De Beers.

The functions of Ayer in carrying out said program have been as follows: (1) writing, designing, and illustrating advertisements, and mechanically preparing them for printing; (2) purchasing advertising space in magazines, newspapers, and trade journals in Ayer's own name and on its own credit; (3) causing advertisements to be published, and checking and verifying insertions of advertisements; (4) disseminating information about diamonds in various ways other than by purchasing advertising space; (5) furnishing to the jewelry trade, at not exceeding cost, materials (such as window and counter displays, booklets, mats for newspaper advertisements, and recordings of radio announcements) and ideas useful to retail jewelers for the purpose of promoting the sale of their own cut gem diamonds; (6) continuously studying cut gem diamonds and their market

in the United States for the purpose of obtaining and developing ideas for advertising "copy" and publicity activities; (7) regularly reporting to De Beers on the progress of the advertising and publicity campaign; and (8) regularly reporting to De Beers on the increase or decrease of sales of cut gem diamonds or diamond jewelry by about 17 retail jewelry stores in various parts of the United States, for the purpose of making some appraisal of the results of the advertising and publicity campaign.

Submitted herewith as Exhibits A-1 and A-2 are bound volumes containing the forms of all advertising which have been published by Ayer as part of the above-mentioned advertising campaign.

Examination of these advertisements will demonstrate the fact pointed out above, that none of the advertisements advertises the articles which said three defendants mine or sell, viz., rough diamonds, but all such advertisements advertise only the ultimate product—cut gem diamonds—fabricated by others, whose operations are separated from the operations of said three defendants by many intermediate steps, heretofore referred to. The advertisements do not solicit the public, diamond retailers, or wholesalers to purchase diamonds from any of said three defendants.

All acts done by Ayer in carrying out the advertising and publicity campaign were appropriate for the purpose of increasing the popularity of cut gem diamonds, making the wearing of diamond jewelry more fashionable, and thus inducing the consuming public to purchase more cut gem diamonds and diamond jewelry from retail jewelers. Said acts were not done by Ayer for any other purpose.

Relationship Between Ayer and De Beers

In planning and carrying out the advertising and publicity campaign hereinbefore referred to, Ayer acted as an independent contractor, not as an agent.

Ayer was engaged by De Beers to accomplish certain results in line with broad policies approved by De Beers, and

at a cost to De Beers not exceeding the annual budgets. De Beers exercised no control or direction over the conduct of the service. Furthermore, the great distance between the United States and South Africa made any control or direction by De Beers from South Africa impossible, and none of the officers or representative of De Beers while in the United States has exercised such control or direction. The detail of all the advertising, its typographical preparation, the development of the material upon which it was based, the determination of the magazines, newspapers and other publications in which it was published, were all determined solely by Ayer. The detail of all news prepared and released in the course of the publicity campaign, and the detail of all promotional material and the manner of its distribution were all determined solely by Ayer. In rendering advertising and publicity service to De Beers, Ayer, in its own name and at the risk of its own capital, bought advertising space from publishers, employed personnel and facilities, placed orders, and made contracts with various persons. Ayer had no power to obligate De Beers contractually, or to make De Beers a party to any transaction. In other words, Ayer annually sells to De Beers an amount of service calculated to cost as nearly as possible a pre-determined amount, and that amount having been determined, Ayer, not De Beers, determines the form and the manner in which the service is to be performed.

Allegations of the Complaint Concerning Ayer

Affiant has read the complaint in the above-entitled suit, and, particularly, paragraph 57 thereof, which alleges in part as follows:

> "(a) De Beers and its subsidiaries have conducted and now carry on an advertising, publicity, and public relations campaign in the United States through its agent, N. W. Ayer & Son, Inc. One object of this campaign is to induce the consuming public in the United States to believe that diamonds are naturally rare and

valuable, and that they are inherently worth the retail prices quoted in the advertisements, prices which are several times those which would prevail under competitive conditions. Another object of the campaign and another function of N. W. Ayer & Son, Inc. is to discourage, eliminate and counteract publicity unfavorable to or critical of De Beers and its subsidiaries. At the direction of De Beers, N. W. Ayer & Son, Inc. has induced publishers of magazines not to run articles which in its view would create publicity unfavorable to De Beers and its subsidiaries.

"(b) N. W. Ayer & Son, Inc. under the direction of De Beers, regularly and continuously performs many services in the United States for De Beers and its subsidiaries. It investigates retail prices by using shoppers. It has reported on United States Government price regulations for diamonds. It reports complaints made by customers of the Diamond Trading Company. It has reported on the numbers, wages, hours, and union membership of diamond cutters in New York and Philadelphia. Its agents travel over the United States in the interest of the public relations and publicity campaigns.

"(c) De Beers and its subsidiaries regularly and continuously have sent and now send representatives to the United States to investigate and report on market conditions, to arrange for and supervise advertising, publicity, and public relations work, and to investigate complaints, most of which have been made because of defendants' monopolistic practices and the resulting high prices, depreciated quality, limited supply, or exclusion of dealers or other purchasers from the trade.

* * * * * *

"(j) De Beers and its subsidiaries have suggested, tampered with, fixed, and maintained, and are suggesting, tampering with, fixing, and maintaining, the United States retail prices of gem diamonds by advertising in the United States the maximum and minimum retail prices for gem diamonds of different weights, thus causing the public to suspect the quality or genuineness of diamonds offered for sale at retail below these prices."

The above-quoted allegations are untrue and misleading in many respects, and affiant therefore sets forth the true facts concerning the matters therein referred to. Except as stated in this affidavit, said allegations are untrue.

Ayer has not done any act to further the alleged restraints upon production and marketing of diamonds, or to further the alleged purpose thereof, and has not in any way put the alleged conspiracy into operation, made it effective, or carried it out.

It is true that Ayer, pursuant to its contract with De Beers, has conducted and now carries on an advertising and publicity campaign in the United States. It is not true that Ayer is the agent of De Beers for this purpose. Ayer performs this service as an independent contractor, as stated above. It is true that one object of this campaign is to induce the consuming public in the United States to believe that diamonds are naturally rare and valuable, which they are in fact. It is not true that one of the objects of this campaign is to induce the consuming public in the United States to believe that diamonds are inherently worth the retail prices quoted in the advertisements. Nor is it true that De Beers has suggested, tampered with, fixed, or maintained, or is suggesting, tampering with, fixing, or maintaining the United States retail prices of gem diamonds by advertising in the United States the maximum and minimum retail prices for gem diamonds of different weights.

Why Diamond Prices Are Quoted in Advertisements

The only purpose of the references to prices in the advertising has been to inform the consuming public as to what retail jewelers in the United States were currently charging for quality cut gem diamonds of the sizes shown in the advertisements.

When Ayer made its above-mentioned survey of the American cut gem diamond market in 1939 for use in planning a diamond advertising and publicity campaign, Ayer's investigators carried a jewel box containing 5 imitation cut gem

diamonds, approximately ½ carat, ¾ carat, 1 carat, 1½ carats, and 2 carats, respectively, in size. The investigators asked each person interviewed to estimate the carat size of the imitation diamonds, and to estimate the current retail prices for diamonds of each size. Very few persons were able to make such estimates with any reasonable degree of accuracy.

In view of the prevailing ignorance about diamond sizes and current retail diamond prices, Ayer concluded that an advertising and publicity campaign, educational in character, to stimulate retail cut gem diamond sales, could not be fully effective unless the advertisements used in the campaign contained information about diamond sizes and prices.

Ayer also believed that the advertising of price quotations was necessary to give the consuming public some idea of what it would cost to realize ownership desire stimulated by the advertising. This practice is common to most consumer advertising. De Beers objected strongly to the incorporation of price information in advertisements, on the ground that De Beers sells only rough diamonds, and not only has no control over retail prices of the ultimate product but believed those prices to be too high. Ayer, believing in the correctness of its position, advised De Beers that it would not be willing to handle the advertising campaign unless price quotations could be used. De Beers withdrew its objection upon Ayer's assurance that the price quotations would be verified by thorough investigation.

It thus happened that Ayer has incorporated in all consumer advertisements published for De Beers facsimiles of cut gem diamonds of several different sizes, together with the average current minimum and maximum retail prices for quality diamonds of each size, and an explanatory statement substantially as follows:

> "Facts about diamonds: These are average current prices for unmounted quality diamonds. Add 20% for federal tax. (The exact weights shown occur infrequently.) Size alone does not determine diamond values. Color, cutting, brilliance and clarity have an

equally important bearing. You should have a trusted jeweler's best advice when buying diamonds."

De Beers has never been favorably disposed to the idea of including retail price quotations in advertisements, and has from time to time reopened the question as to the wisdom of so doing. This is mentioned in the following contemporaneous memoranda made by me as a vice-president of Ayer:

(1) Memorandum dated April 28, 1941:

"Mr. Dickinson [a director of De Beers] has wanted to eliminate prices from advertisements. He has given in on our insistence that prices should be in, with the proviso that we will check once more both Retail and Wholesale diamond prices * * *."

(2) Memorandum dated Nov. 30, 1944:

"When the writer was in South Africa [in July, 1944], Mr. Harry Oppenheimer as well as Sir Ernest had about made up their minds that we should not carry prices in the advertising. Their main reason was that the prices to be carried in the advertising were much too high. As a matter of fact, they questioned the accuracy of our prices.

"After thorough discussion of the policy involved, I received their permission to continue to show prices which were obtained in the same manner as they had been obtained in the past. * * *

"As the writer reported in the Creative Production Board meeting, Sir Ernest Oppenheimer cannot understand how the prices get as high as they do, for the sale of polished goods at retail in the United States. He recognizes that there must be considerable inefficiency in the distribution system which is in very little manner affected by their pricing policy."

Although De Beers considered the prices quoted in the advertisements to be too high, many retail jewelers and wholesale dealers in diamonds have complained to Ayer that these prices are too low.

The price quotations in said advertisements merely represent the average price ranges of cut gem diamonds being

currently charged by the retailers. It is not possible, in the light of the many thousands of competitive retail dealers in diamonds, that said price quotations could have the effect of fixing or maintaining such retail prices, and the price quotations were not used for any such purpose.

That the description of sizes and prices in the advertising could not possibly have had either the object or the effect of tampering with or fixing or maintaining prices is evident from the very wide range of prices set forth in the advertisements themselves. For example, the advertisements now being published state "average current prices for unmounted quality diamonds" as follows: one-quarter carat, $85 to $200; one-half carat, $190 to $375; one carat, $540 to $835; two carats, $1375 to $2300.

The diamond mines can be operated profitably only on a volume basis. Any advertising policy on the part of De Beers having the effect of supporting unreasonably high retail prices for cut gem diamonds would ultimately cause a reduction in the volume of sales of rough diamonds, with the result that the mines would have to stop production or operate at a loss.

Ayer's Investigation of Retail Prices

Because of the fact that the inclusion of these price descriptions in the advertisements was contrary to the wishes of its client, De Beers, and was consented to by the client only upon Ayer's assurance that such price descriptions would be wholly accurate, Ayer has constantly kept itself informed as to the current range of retail prices throughout the United States. That, and that only, has been the purpose of the investigation by shoppers mentioned in paragraph 57(b) of the complaint.

These investigations have been made for Ayer by three independent services, Elmo Roper, Willmark Research Corporation and Jewelers' Circular-Keystone, as well as by members of Ayer's own staff.

At least eight surveys have been conducted for this purpose during the 4½ years in which the consumer advertising has appeared. Each survey was conducted in many cities and included reports from twenty to fifty jewelers.

Ayer's Reports on Government Price Regulations

It is true that Ayer has reported to De Beers on United States Government price regulations for diamonds. These reports consisted of a few letters and telegrams sent by affiant to H. T. Dickinson at Johannesburg, South Africa, during the period from September, 1942, to August, 1943, on the subject of ceilings fixed by the Office of Price Administration on prices of diamonds. Such ceilings were fixed during 1942, and Dickinson asked affiant for information about them. That the information was not sought for use in an attempt to fix or increase diamond prices in the United States is shown by a letter of Dickinson to affiant, dated at Johannesburg, October 1, 1943, in which Dickinson said:

> "I have your air mail letter of the 24th August reporting that the Office of Price Administration had removed all ceilings on gem stones.
>
> "As mentioned in previous correspondence we are somewhat alarmed at the unjustified increase in the prices of gem stones, but there is very little we can do about it owing to the number of intermediaries interested."

Ayer's Reports on Complaints

In 1943, Ayer heard of complaints made by certain users of industrial diamonds in the United States who were not customers of Diamond Trading Company, Ltd. Ayer discussed these complaints with a diamond dealer in New York who was a customer of Diamond Trading Company, Ltd., and he, too, voiced some dissatisfaction. Thereupon Ayer, upon its own initiative, reported these complaints to De Beers. Subsequently affiant, at the request of Dickinson, inquired of the War Production Board as to its attitude

toward such complaints and reported the results to Dickinson. On no other occasion has Ayer reported to De Beers on complaints by a user or customer of Diamond Trading Company, Ltd.

Ayer's Reports on the Diamond Cutting Industry

It is true that Ayer has reported to De Beers on the numbers, wages, hours, and union membership of diamond cutters in New York and Philadelphia. Ayer made such reports by cables and letters sent to Dickinson at Johannesburg, at Dickinson's request, in February, March and April, 1943. The reason for Dickinson's request is shown by the following extract from a letter from him, dated at Johannesburg, South Africa, April 9, 1943, and addressed to affiant:

> "The reason for our request was that there has been some agitation here in connection with the wages paid to South African Cutters. Continuous applications are being made by the Cutting employees for increased wages and the matter was finally brought to the attention of the Minister of Mines, who, of course, is very interested in the expansion of the Cutting Industry in South Africa. The Minister requested the Diamond Producers Association to advise him of the position, and for this purpose it was thought advisable to obtain the scale of wages paid in the United States and other countries. With the information given by you and from other sources, a memorandum has been prepared and sent to the Minister, but I do not believe that this will be of great assistance to him in dealing with the position in South Africa.
>
> "I may add that the Producers are deeply interested in the cost of cutting of rough diamonds, for this must affect the price of diamonds to the consumer. However, in these times very little can be done by us to keep Cutters' wages within reasonable bounds, as it is fairly evident that the Master Cutters must be making very substantial profits, or they could not meet the numerous demands for higher scales."

Ayer also reported on the diamond cutting industry in July, 1944, when Ayer cabled an answer to an inquiry from

De Beers as to whether the wages of diamond cutters in the United States had been reduced. Ayer also at infrequent intervals advised De Beers on the estimated number of diamond cutters working in the United States.

Except as stated above, Ayer made no reports on the aforesaid topics.

The Publicity Campaign and Alleged Activities of Ayer for the Purpose of Discouraging, Eliminating and Counteracting Publicity unfavorable to or Critical of De Beers and its Subsidiaries

In Ayer's report of April, 1939 to De Beers under the caption "Publicity Plan for the Promotion of Diamonds in the United States", Ayer outlined the nature and object of the publicity program as follows:

> "Publicity, as we define it, consists of news and feature material that is interesting and informative enough to be accepted on its own merits by editors of magazines and newspapers, by radio or wireless stations, and by motion picture producers. The publicity should have the same objective as your advertising—the creation of greater interest in and acceptance of diamonds. Thus advertising and publicity will work hand in hand, each a separate and distinct activity, yet the two joined to attain the same end. * * *"

The news and feature material referred to in the foregoing extract from Ayer's report was either prepared by Ayer or based on ideas furnished by Ayer to others. The subject matter is designed to arouse interest in cut gem diamonds, to make them more popular, to make the wearing of them more fashionable, and thus to induce the consuming public to purchase diamond jewelry from retail jewelers. This news and feature material has often related to such matters as mining, cutting and polishing of diamonds, the uses of diamonds for personal adornment and in industry, and the importance of diamonds in the war effort, but the object has always been the same—to stimulate interest in,

and retail sales of, cut gem diamonds. Ayer has never induced any publisher not to publish an article. In order to assure accuracy in news and feature material prepared by others, and to eliminate statements therein which might adversely affect the popularity of diamond jewelry, Ayer has often made suggestions to writers, editors or publishers for the correction or modification of their news and feature material relating to diamonds or the diamond industry. Ayer considered publicity unfavorable to De Beers or others engaged in the diamond industry to be publicity which might adversely affect the popularity of diamond jewelry. In a few instances Ayer's suggestions for changes related to De Beers or its subsidiaries. Some, but not all, of those suggestions were adopted.

Other Services of Ayer

It is true that other services, mentioned but not specified in clause (b) of paragraph 57 of the complaint, have been performed by Ayer in the United States for De Beers. The only services not directly connected with the advertising or publicity campaign and not heretofore mentioned in this affidavit were the following:

(a) Sending to De Beers occasionally information, newspaper clippings, magazines, or other publications, containing news relating to diamonds or other minerals, which affiant thought might be of interest to De Beers.

(b) Obtaining copies of 4 patents from the Patent Office, requested by De Beers in 1944.

(c) Binding a report by Lute J. Parkinson in 1944, for which De Beers reimbursed Ayer.

(d) Doing minor personal favors from time to time for officers or employees of De Beers while they were in the United States.

(e) Obtaining office space and providing stenographic service for De Beers in 1941 under the following circumstances: As an accommodation to De Beers, Ayer obtained in its own name "permission to occupy, temporarily," from time to time from March 24, 1941 to September 8, 1941, approximately 200 square feet of space at 30 Rockefeller Plaza, New York City, ostensibly for the use of Ayer, but actually, with the knowledge and consent of the landlord, for use as a place for sorting diamonds. S. H. Routley, an employee of one of said three defendants, was in charge of this sorting. Secrecy as to the purpose for which the space was to be used was necessary for the protection of the diamonds. Ayer was reimbursed by De Beers for the amount paid ($40 per month) for the use of this space, but Ayer received no compensation for services in this connection. Ayer also provided stenographic help, for which Ayer was reimbursed by De Beers.

(f) As a business courtesy, furnished Sir Ernest Oppenheimer, Harold T. Dickinson, John Morrison, Stanley H. Routley, Harry Nicholson, and L. J. Parkinson desk space and telephone and stenographic service at the Ayer office, 30 Rockefeller Plaza, New York, N. Y., for their use while on their visits to the United States as hereinafter described. No charge was made for such services.

Activities of Representatives of De Beers and its Subsidiaries in the United States

It is not true that De Beers and its subsidiaries regularly and continuously have sent and now send representatives to the United States to investigate and report on market conditions, to arrange for and supervise the advertising and publicity campaign, or to investigate complaints.

To the best of the knowledge and belief of affiant (and affiant believes that his knowledge is accurate), the only persons having any connection with any of said three defendants who have been in the United States since 1938, and the time and purpose of their presence here, have been as follows:

Sir Ernest Oppenheimer.

He was here for about three months in 1940 for the purpose of assisting the United States Government to obtain a stockpile of industrial diamonds for war purposes.

Harry A. Oppenheimer.

He was here in 1938 for the purpose of making arrangements for the De Beers exhibit at the New York World's Fair of 1939.

Harold T. Dickinson.

He was here from March until September, 1939, for the purpose of having a holiday here and assisting in the arrangements for the De Beers exhibit at the New York World's Fair of 1939. He was also here from February, 1941 until July, 1942, for the purpose of facilitating the procurement of industrial diamonds by the United States Government for war purposes. During his stay he had a serious operation at the Johns Hopkins Hospital, and an attack of pneumonia, for which he was treated at the Jackson Heights Hospital. He was ready to leave in the fall of 1941 but was unable to obtain passage to South Africa until July 1942 due to wartime travel conditions. He spent some of his time at resort hotels in Florida, at Sky Top, Pa., and other resorts.

Fergus Rogers.

He was here in 1939 for the purpose of attending to the De Beers exhibit at the New York World's Fair of 1939.

Lute J. Parkinson.

He was a mining engineer who had been a General Manager in charge of mining operations in South Africa. Upon terminating that employment with De Beers, he came to this country, where he was retained by De Beers to make a study and report of the industrial diamond trade. He completed that report in January, 1944, after which, I am informed, and believe, he had no relationship whatever with De Beers.

John Morrison.

He came here late in 1940 for the purpose of assisting in the procurement of industrial diamonds by the United States Government for war purposes and also in connection with a study then being made as to whether De Beers or one of its subsidiaries would organize a corporation in New York to do business in rough diamonds in the United States. The corporation was not organized and affiant was advised that De Beers had determined to do no business in the United States even through a subsidiary. He remained here for a time in 1941. His departure was delayed by the fact that he was ill, in a hospital in Westchester County, for several months.

Harry Nicholson.

He was a diamond sorter and was here late in 1940 and for most of 1941 for the purpose of sorting diamonds in connection with the procurement of industrial diamonds by the United States Government for war purposes.

S. H. Routley.

He was a diamond sorter employed by one of said three defendants. He was here late in 1940 and for most of 1941 for the purpose of sorting diamonds in connection with the procurement of industrial diamonds by the United States Government for war purposes. He was also in the United States in December,

1944, when his wife came to New York City for medical attention, and in the course of his visit he collected the copies of the Parkinson Report and related material which had been left with Ayer by Parkinson when he severed his relationship with De Beers and left for South America.

(signed) WARNER S. SHELLY

Sworn to before me this
23rd day of March, 1945.

PAUL J. CHASE
Notary Public

PAUL J. CHASE
Notary Public, Westchester County
N. Y. Co. Clk's No. 1020, Reg. No. 626-C-6
King's Co. Clk's No. 206, Reg. No. 406-C-6
Commission Expires March 30, 1946

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff,* *against* DE BEERS CONSOLIDATED MINES, LTD., *et al.*, *Defendants.*	Civil No. 29-446

AFFIDAVIT OF PAUL J. TIMBAL

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

PAUL J. TIMBAL, being duly sworn, deposes and says:

Since 1937 I have been Managing Director (i.e., chief executive officer) of Banque Diamantaire Anversoise, Société Anonyme, Antwerp, Belgium (hereinafter referred to as the Bank). The Bank was organized in 1934 under the laws of the Kingdom of Belgium under the name of Comptoir Diamantaire Aversois, Société Anonyme, which was changed in July, 1937, to Banque Diamantaire Anversoise Société Anonyme.

The authorized and issued capital stock of the Bank is 60,000,000 in Belgian francs, which is represented by 60,000 bearer shares of stock without par value. Upon information and belief, based upon my knowledge of the Bank's affairs, the shares of the Bank are held by the following in approximately the amounts set forth below:

Kredict Bank voor Handel on Nyverheid— Brussels	13,500 shares
Societe Belge de Banque Brussels	10,000 "
Group of Mr. Paul J. Timbal	10,000* "

*None of the owners of the shares of the Timbal group has any connection with De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd., or Diamond Trading Co., Ltd. The voting rights of these shares are customarily exercised by myself.

Societe Forestiere et Miniere du Congo.....	6,000	shares
Compagnie Financiere et Industrielle "Confinindus"—Brussels	6,000	"
Banque Transatlantique Paris.....	4,000	"
Diamond Corporation, Ltd.....	2,500	"
De Beers Consolidated Mines, Ltd.....	2,450	"
William A. Chapple and G. Tooth—London	1,950	"
Jac Jolis—New York, N. Y.....	1,300	"
Miscellaneous	2,300	"
Total	60,000	"

The directors and principal executive officers of the Bank are as follows:

Chairman of the Board: Mr. Albert Edouard Janssen, President of the Societe Belge de Banque, Brussels.

Vice-Chairman: Mr. Phillipe Van Isacker, Vice-President of the Kredietbank voor Handel en Nijverheid, Brussels.

General Sir John Pb. DuCane, G.C.B., Deputy Chairman of the De Beers Consolidated Mines, Ltd., London.

Managing Director: Mr. Paul J. Timbal, Director of the Societe Belge de Banque, Brussels.

Directors: Mr. Suchet, Manager of Banque Transatlantique, Paris.

Mr. William A. Chapple, Manager of the Diamond Trading Co., Ltd., London.

Mr. Joseph Dewyspelaere, Commercial Manager of the Societe Internationale Forestiere et Miniere du Congo, Brussels.

Baron Paul Houtart, Bank Director, Brussels.

Of the eight persons who are directors of the Bank, only two, General Sir John Ph. DuCane, Deputy Chairman of De Beers, and Mr. William A. Chapple, Manager of Diamond Trading, have any connection with the defendants De Beers Consolidated Mines, Limited, Diamond Corporation, Limited or Diamond Trading Company, Limited (hereinafter referred to respectively as De Beers, Diamond Corporation and Diamond Trading), service upon which defendants was purported to have been made by service upon the Bank.

Although the Bank under its charter is authorized to do a general banking business, the field of its activity has been largely in the financing of the operations of the Bank's customers engaged in the diamond trade and industry. Prior to the invasion of Belgium in May, 1940, Belgium was one of the principal centers of the Diamond industry, and the cutting of diamonds was almost entirely confined to Belgium and Holland and certain parts of Germany. Until the issuance of a license in 1941 to the Bank to do business in New York, as hereinafter described the only office of the Bank was in Antwerp, Belgium.

The principal business of the Bank in Antwerp consisted in financing for its customers the import of uncut diamonds from London, South Africa, and certain parts of South America to the principal cutting centers, the cutting of the diamonds so imported and the export of the cut diamonds chiefly to the United States of America, South America, India, and the Netherlands Indies. This financing took the form of loans to importers to enable them to purchase uncut diamonds, the diamonds being pledged as security for the loans, and the discounting or rediscounting of notes of the purchasers of the cut stones.

After the fall of Belgium and France I came to New York in 1940 for the purpose of establishing an office of the Bank here in order to continue its business, since a considerable number of the Bank's customers had come to the United States and established themselves in New York City. Thereafter, on May 16, 1941, the Superintendent of Banks

of the State of New York, issued a license authorizing the Bank to transact a limited banking business in New York. This license, originally issued for a period of three months, has since been renewed from time to time and is still in effect.

On June 30, 1941 I opened an office for the transaction of the Bank's business at 630 Fifth Avenue, New York City. In accordance with the practice of the New York State Banking Department with respect to foreign banks, licensed to transact business in this State, the aforesaid office operates under the designation of the New York Agency of the Bank and is hereinafter referred to as the Agency of the Bank or the Agency.

Since the establishment of the Agency of the Bank in 1941, in addition to concerning itself with the management and the recovery of the assets of the Bank, which were located to a large extent in the United States, said Agency has financed for the Bank's customers the purchase of diamonds and watches abroad by means of loans to said customers in the United States and has financed local purchases and sales of diamonds in the United States between local dealers.

Approximately fifty per cent. of the Bank's business in New York, since the establishment of its agency in 1941, has been the financing of local transactions in diamonds between local New York dealers and merchants, of the purchase of cut gem and rough uncut diamonds in Palestine and South Africa, of the purchase of synthetic and semi-precious stones in Bermuda, and of the purchase of watches in Switzerland; the balance having been the financing for local New York buyers of the purchase by them of rough uncut diamonds in London, England, from Diamond Trading and others.

The method generally by which the Agency finances the importation of diamonds purchased by customers of the Bank (hereinafter referred to as the customer) from Diamond Trading and the steps by which it is carried out, are as follows:

(1) The customer, after making his arrangements to purchase in London through his broker there, by letter requests the Agency to advance to the customer and, for his account, to pay to the Federal Reserve Bank of New York a stated sum of money for the account of a named English bank in favor of Diamond Trading, which sum represents the purchase price of diamonds and the cost of insurance and postage thereon from London to New York. The customer executes a note in favor of the Agency, pledges the diamonds as collateral security for the payment made by the Agency, and agrees that the diamonds be sent directly to the Agency for the account of the customer.

(2) The Agency pays to the Federal Reserve Bank in New York the amount requested by the customer with instructions to transmit the funds to England for the account of the customer. The Agency charges the amount of the payment to the customer's advance account, discounts the notes received from the customer representing the advance and credits the proceeds to the customer's advance account. At the same time the Agency cables to Mr. William A. Chapple in London, one of the directors of the Bank, advising him that the Agency has paid the Federal Reserve Bank in New York for the account of the customer and instructing that the diamonds be sent directly to the Agency for the customer's account.

(3) Mr. Chapple transmits a copy of the cable mentioned in (2) to Diamond Trading and Diamond Trading acknowledges to the Agency of the Bank that it has been credited with the amount transmitted by said Agency and advises that Diamond Trading is sending the diamonds purchased to the Agency for the customer's account.

(4) The diamonds are insured in London at the expense and in favor of the customer. Commercial and consular invoices are made out in London in the name of the customer as purchaser and the diamonds are sent by Diamond

Trading to and received by the Agency for the account of the customer. If the customer wishes to take possession of the diamonds from the Agency before repaying his indebtedness, he signs a trust receipt obligating him to hold them or the proceeds thereof in trust for the Agency and upon the sale thereof his loan with the Agency is liquidated. Otherwise the diamonds are held by the Agency as collateral security for the loan until it is paid. The diamonds are sent to the Agency instead of the customer solely at the Agency's request pursuant to its agreement with the customer in order to protect its lien on the diamonds.

Upon payment of the purchase price, cost of insurance and postage in London to Diamond Trading, the diamonds purchased become the property of the customer subject to the Bank's lien thereon and Diamond Trading thereafter has no interest therein. The Agency receives the diamonds as bailee of the buyer, the customer of the Bank, and as pledgee of the diamonds to secure repayment of advances by the Agency.

When the credit standing of the customer justifies an unsecured loan the Agency either (a) advances the money to him without collateral, remitting the funds for his account to London for the purchase of diamonds, and the diamonds are sent directly to the customer, or (b) advances the money to the customer and he himself remits the funds to London, in which case also the diamonds are sent directly to the customer.

The greater part of the diamonds purchased in London by the Bank's customers have been purchased by them from Diamond Trading. Diamond Trading has from time to time inquired of the Agency of the Bank concerning the trade and financial standing of prospective New York diamond buyers and the Agency has furnished such information. The Agency is under no obligation to furnish such information or to make investigations for Diamond Trading and has furnished such information because it is in the Bank's interest, wherever possible, to see that its prospective customers are

able to purchase diamonds when their standing so warrants, in order that the Bank may make loans to them for that purpose.

Neither I nor any of the Agency's employees has or ever had any connection with any of the defendants, De Beers, Diamond Corporation or Diamond Trading. None of the diamonds delivered to the Agency was received by it to be distributed as agent for Diamond Trading to the purchasers thereof. Neither the Bank nor the Agency is or ever has been an agent of any of the defendants, De Beers, Diamond Corporation or Diamond Trading in any respect nor has any of those defendants ever authorized the Bank or the Agency to receive process in suits brought in the State of New York or elsewhere against any of them.

P. J. TIMBAL

Sworn to before me this
21st day of March, 1945.

DAVID SCHAPIRO
Notary Public

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,
against
DE BEERS CONSOLIDATED MINES, LTD., *et al.*,
Defendants.

AFFIDAVIT OF SYDNEY H. BALL

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

SYDNEY H. BALL, being duly sworn, deposes and says:

I am a mining engineer and geologist and a member of the firm of Rogers, Mayer & Ball, mining engineers, with offices at 26 Beaver Street, New York City. Since 1909, I have been actively engaged in the practice of my profession in New York City and have had extensive training and experience in connection with diamonds and other precious stones in addition to a general practice as to metals and other minerals. I have been President of the Society of Economic Geologists, President of the Mining and Metallurgical Society of America, director of the American Institute of Mining and Metallurgical Engineers, and I am now President of the Mining Club in New York City.

In addition to my general practice as a mining engineer I am consulting geologist for Societe Internationale Forestiere et Miniere du Congo, and consulting diamond editor of the Jewelers' Circular-Keystone. Until recently, I served three days a week in Washington as Special Assistant to the Director of the Raw Materials Division of the War Production Board.

As a result of my interest in gems and my knowledge of the gem industry, I have been and am well acquainted with

leading jewelers and others in the gem industry. As a result of this acquaintance and interest, in 1938, when the organization of the New York Worlds Fair which opened in 1939, was in progress, I, with others, was instrumental in arousing interest among leading Fifth Avenue (New York City) jewelers in presenting an exhibit of precious stones and jewelry at the Fair. These jewelers, Tiffany & Co., Cartier & Co., Black, Starr & Frost-Gorham, Inc., Marcus & Co., and Udall & Ballou, decided to present an exhibit which was named the House of Jewels. The jewelers interested De Beers Consolidated Mines, Ltd. in participating in the exhibit and as a result of suggestions by the jewelers to De Beers, De Beers requested me to represent its interests until one of its representatives could be sent over to the United States to take care of its interest in the exhibit. This I agreed to do and I attended meetings of the jewelers and kept De Beers informed thereof until its representative at said exhibit, Mr. Fergus S. C. Rogers, arrived in the United States in January, 1939. Thereafter Mr. Rogers represented the interests of De Beers, and I advised with him from time to time until the opening of the Fair in 1939.

Prior to the arrival of Mr. Rogers I paid De Beers' share of the expenses in connection with the projected jewelers' exhibit, such as rent for space at the Fair, etc., from funds in the Standard Bank of South Africa, New York Agency, standing to the credit of De Beers as to which I had a power of attorney. Soon after the arrival of Mr. Rogers, I withdrew the balance of the funds in that account and turned it over to him. For a short time prior to the reopening of the Fair in 1940, I, on behalf of De Beers, attended meetings of representatives of the jewelers who were participating in the Worlds Fair. After the arrival of the De Beers representative, I ceased to engage in any activities on behalf of De Beers.

In recognition of my services in connection with the organization of the jewelers' exhibit in 1938 and the early part of 1939, De Beers paid me an honorarium on August 29, 1939

For my activities in connection with the Fair in early 1940, I received no remuneration.

In October, 1940, De Beers offered to pay me a yearly fee if I would make periodic reports to De Beers of current information regarding the American diamond industry. I accepted that offer and since November 11, 1940, have mailed to De Beers in Kimberly, South Africa, periodic surveys of the diamond industry in North America. These surveys contain general information, available to anyone, from trade journals, financial papers and the daily papers concerning American business conditions, Canadian business conditions, American wholesale jewelry sales, Canadian jewelry sales, the amounts of United States and Canadian diamond imports (as the figures for such imports are released by the respective governments), diamond cutting, diamond prices and diamond consumption. My initial contract with De Beers covered a period of two years, ending October 31, 1942. It was thereafter renewed from year to year and is presently in force, to expire October 31, 1945, subject to renewal. In this work I have been retained by De Beers as an expert just as any professional expert is retained, and am in no sense an employee or agent subject to their domination or control. The material contained in the surveys, and the method of presenting it, is determined entirely by myself.

Neither I nor any member of my firm nor the firm itself has ever been an officer, director or employee of De Beers Consolidated Mines, Ltd., The Diamond Corporation, Ltd., or Diamond Trading Company, Ltd., nor have I, nor said firm nor any member thereof, been authorized by any of them as agent to receive process in suits brought in the State of New York or elsewhere.

SYDNEY H. BALL

Sworn to before me this
8th day of March, 1945.

WILLIAM J. BRENNAN
Notary Public

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM,
Defendants.

Civil No. 29-446

AFFIDAVIT

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

ROBERT T. SWAINE, being duly sworn, deposes and says:

I am a member of the law firm of Cravath, Swaine & Moore, 15 Broad Street, New York, N. Y., which, on the afternoon of February 1, 1945, was retained, as the result of a cable from Johannesburg, Union of South Africa, to advise the defendants De Beers Consolidated Mines, Ltd. (hereinafter called De Beers), Diamond Corporation, Ltd. (hereinafter called Diamond Corporation), and Diamond Trading Company, Ltd. (hereinafter called Diamond Trading).

Paragraph 18 of the complaint herein reads as follows:

> "18. Lute J. Parkinson, a resident of New York City, is made a defendant. He is now and for many years has been assistant general manager and an agent of De Beers."

In view of this allegation I at once sought to ascertain the whereabouts of and make contact with Mr. Parkinson, but was unable to establish such contact until late in the afternoon of Saturday, February 3. I then was told that he was registered at the Hotel Royalton on West 44th Street, New York City. On telephoning that Hotel and asking to be connected with Mr. Parkinson, a gentleman answered the telephone and advised me that he was Mr. Parkinson, but expressed great surprise and concern that I had learned of his whereabouts. I explained that I was counsel for the three defendants above named, told him of the allegation in paragraph 18 of the complaint, and asked if he would see me. He told me that he was the Mr. Parkinson referred to but that he was not and had not been for some time Assistant General Manager and had never been an agent of De Beers in this country. After further discussion he agreed to see me.

I then went to the Hotel Royalton, asked the telephone operator at the lobby desk to connect me with Mr. Parkinson, and on being connected, spoke to a gentleman with the same voice as the one with whom I had previously talked. Within a few minutes a gentleman emerged from the elevator and introduced himself to me as Mr. Parkinson. He suggested that we should go somewhere else to talk. Accordingly, we crossed the street to the Hotel Algonquin, also on West 44th Street.

Mr. Parkinson said he was planning immediately to leave the United States and that he did not want to get mixed up in this litigation as he knew nothing about it, and he did not want it by any possibility to interfere with his work in South America.

I handed him a copy of the complaint, reading to him particularly paragraphs 18 and 20, and summarizing for him the contents of the other paragraphs.

He told me that on completing his technical training in the United States he went to Africa in 1923 as a mining engineer and there engaged in the practice of his profession until August, 1943; that he was first employed by De Beers in 1936 as Assistant General Manager in charge of mining operations at Kimberley, Union of South Africa; that his duties and authority were confined solely to mining operations; that he had no duties or authority in connection with the marketing of products of the mines, or with the contractual relationships between De Beers and other corporations, or otherwise in connection with the direction or management of the affairs of De Beers or of any of the corporations associated with it; and particularly that he had no duties or authority or any connection with any of the defendants described in the complaint except only the one report hereinafter mentioned.

He told me that in August, 1943, he terminated his work as Assistant General Manager of the mines at Kimberley and came to the United States; that he was retained by De Beers to make a study of and report on the use of industrial diamonds and the market therefor in the United States; that he made such a study and report and concluded all his activities in connection therewith during the month of January, 1944; and that on January 31, 1944, he ceased to have any connection of any nature whatsoever with De Beers or any corporation associated with it and since that date has had no such connection.

He exhibited to me an original letter dated in January, 1944, on De Beers' letterhead and purporting to be signed on behalf of De Beers, which confirmed the termination of his employment by De Beers as of January 31, 1944, and contained expressions of commendation for his services to De Beers.

He told me that at no time had he ever had any connection of any kind with Diamond Corporation or Diamond Trading.

He also told me that since January, 1944, he had been employed by American corporations in no way connected with De Beers, in connection with copper mining operations, largely in South America, and that he was planning immediately to leave for Chile.

I asked him if he would give me an affidavit covering the matters which he had told me. He said that he wanted to consult someone on the legal staff of his present employer before making such an affidavit, said he would do so on Monday morning, February 5, 1945, and get in touch with me during that day. When I did not hear from him on Monday I made an effort to reestablish contact but was unable to reach him or get any information about him either at the Hotel Royalton or at the office of the corporation which he had told me was his present employer, except that on my telephone call to the latter office another person, whose voice I am sure was not that of the gentleman I had previously spoken to, told me that Mr. Parkinson had decided that he did not want to execute any affidavit and expected to be on his way to South America within 24 hours.

ROBERT T. SWAINE

Sworn to before me this 7th day of February, 1945.

THOMAS E. McGUIRE
Notary Public.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff,* *against* DE BEERS CONSOLIDATED MINES, LTD., *et al.*, *Defendants.*	Civil No. 29-446

AFFIDAVIT OF JOHN PRENTICE

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

JOHN PRENTICE, being duly sworn, deposes and says:

I am a Second Vice-President of The Chase National Bank of the City of New York, 18 Pine Street, New York, N. Y.

I have caused the records of the bank to be examined for the purpose of ascertaining whether DeBeers Consolidated Mines, Ltd. maintains or has maintained an account with the bank. Said examination does not reveal that an account is now or has been in the past, maintained with the bank in the name of DeBeers Consolidated Mines, Ltd., nor do the records of the bank show that DeBeers Consolidated Mines, Ltd. has or had an interest in any account maintained at present or in the past with the bank.

JOHN PRENTICE

Sworn to before me this 15th day of March, 1945.

HENRY P. SCHOERRY
Notary Public

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff,* *against* DE BEERS CONSOLIDATED MINES, LTD., *et al.*, *Defendants.*	Civil No. 29-446

AFFIDAVIT OF E. D. EVANS

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

E. D. EVANS, being duly sworn, deposes and says:

I am New York Agent of Barclays Bank (Dominion, Colonial and Overseas), 120 Broadway, New York City.

I have caused the records of the Agency to be examined for the purpose of ascertaining whether or not De Beers Consolidated Mines, Ltd. has or ever had an account or accounts with the New York Agency of the Bank. Such examination reveals that De Beers has never had and does not at present have any such account with the Agency, nor is there anything in the Agency's records to indicate that De Beers had or now has any interest in any accounts maintained with the Agency in any other name.

E. D. EVANS

Sworn to before me this 16
day of March, 1945

WILLIAM E. RICHMOND
Notary Public

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff*, *against* DE BEERS CONSOLIDATED MINES, LTD., *et al.*, *Defendants*.	Civil No. 29-416

AFFIDAVIT OF H. H. CASS

STATE OF NEW YORK, COUNTY OF NEW YORK; } ss.:

H. H. CASS, being duly sworn, deposes and says:

I am the New York Agent of The Standard Bank of South Africa, Ltd., 67 Wall Street, New York City.

I have caused the record of the Bank to be examined for the purpose of ascertaining whether or not De Beers Consolidated Mines, Ltd., had or has an account or accounts with the Bank. Such examination reveals the following:

De Beers opened an account with the Bank on April 12, 1938, which account was closed May 10, 1939. Thereafter De Beers opened another account on December 21, 1939, with a telegraphic transfer of approximately $137,000. This balance was subsequently increased to approximately $265,000 and thereafter reduced to approximately $190,800 on April 30, 1940, by payments made upon cable instructions from De Beers. The balance of approximately $190,000 remained until March 30, 1942, beginning at which time monthly payments were made upon cable instructions from De Beers throughout the year 1942, the entire balance being paid out on December 31, 1942. Thereafter no balance was kept in the account, but De Beers cabled monthly remittances to

the Bank which were paid out upon cable instructions within a few days after receipt of the remittances, with the exception of a balance of approximately $6,700 which remained in the account from March 8, 1944, until June 30, 1944.

At present there is standing to the credit of De Beers with the Bank the sum of $59,321 which represents a cable remittance from De Beers received by the Bank on January 29, 1945, which sum would have been paid out a few days after its receipt were it not for a restraining order issued by the United States District Court, Southern District of New York, on January 29, 1945, and amendments and modifications thereof served upon the Bank.

Accounts have been maintained by the following individuals as to whom the Bank's information is that they had some connection with De Beers:

An account entitled "F. S. C. Rogers (Exhibition Account)" was opened on January 16, 1939, and closed May 17, 1940.

An account entitled "F. S. C. Rogers (Boart Products, Ltd., Account)" was opened February 27, 1939, and closed July 24, 1941.

An account entitled "H. Simpson Exhibition a/c" was opened on April 27, 1940, and closed April 8, 1941.

An account in the name of John Morrison was opened on June 27, 1940, and closed April 1, 1941.

An account entitled "H. T. Dickinson "Publicity Account"" was opened on December 26, 1940, and closed March 8, 1944.

An account entitled "H. T. Dickinson D. B. Account" was opened on April 1, 1941, and closed March 8, 1944.

No other accounts have been or are maintained with the Bank as to which, so far as the Bank's records show, De Beers had or has any interest.

H. H. Cass

Sworn to before me this
16th day of March, 1945.

Thomas E. McGuire
Notary Public.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff,* *against* DE BEERS CONSOLIDATED MINES, LTD., *et al.*, *Defendants.*	Civil No. 29-446

AFFIDAVIT OF HENRY E. DODGE

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

HENRY E. DODGE, being duly sworn, deposes and says:

I am Secretary and Treasurer of Newmont Mining Corporation, 14 Wall Street, New York, N. Y.

De Beers Consolidated Mines, Ltd. does not maintain nor has it at any time maintained an office or office space at Newmont Mining Corporation. At the request of and as a courtesy to Sir Ernest Oppenheimer the Corporation permitted Mr. L. J. Parkinson, formerly Assistant General Manager of De Beers Consolidated Mines, Ltd., to use a desk at the offices of the Corporation, 14 Wall Street, New York City, from the middle of September, 1943, to the middle of January, 1944. During said period, Mr. Parkinson made only occasional visits to said offices. No charge was made by the Corporation therefor. No other representative of De Beers has ever made any use of the offices of the Corporation.

HENRY E. DODGE

Sworn to before me this
16th day of March, 1945.

WALTER P. SCHMID
Notary Public

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff,* *against* DE BEERS CONSOLIDATED MINES, LTD., *et al.*, *Defendants.*	Civil No. 29-446

AFFIDAVIT OF L. D. SIMPSON

STATE OF NEW YORK, COUNTY OF NEW YORK, } ss.:

L. D. SIMPSON, being duly sworn, deposes and says:

I am an attorney associated with the law firm of Cravath, Swaine & Moore, 15 Broad Street, New York, N. Y., which firm has been retained to advise the defendants, De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd., and Diamond Trading Company, Ltd.

I am familiar with the proceedings heretofore had herein and make this affidavit in answer in part to an affidavit of Edward S. Stimson, Special Assistant to the Attorney General, verified March 9, 1945. The statements herein are based upon information received in cables from Ernest Oppenheimer and De Beers in South Africa and conversations with persons having personal knowledge of some but not all of the facts stated herein and examination of documents in their possession.

De Beers

De Beers participated in the jewelers' exhibit, known as the House of Jewels, at the New York World's Fair in 1939 and 1940. Specifically and only for the purpose of participating in this exhibit, De Beers had some of its rough uncut

diamonds (1,000 carats or less) cut and polished into gems in South Africa and sent them to the United States to be placed in the exhibit. These diamonds were exhibited at the Fair and when the Fair closed in New York they were placed in a safe deposit box in New York City. They were subsequently sold in 1941 to Baumgold Brothers, 62 West 47th Street, New York City. These are the only diamonds belonging to De Beers which have ever been sold in the United States.

Diamond Corporation

Diamond Corporation also participated in the House of Jewels exhibit at the New York World's Fair in 1939 and 1940. Diamond Corporation sent to the United States approximately 61,893 carats of rough uncut diamonds for the sole purpose of having them exhibited at the Fair. They were then and there so exhibited. Of these diamonds approximately 27,841 carats were boart. These diamonds were not, as stated in the Stimson affidavit, displayed for the purpose of obtaining customers for such diamonds but for exhibition purposes only at the Fair. After the close of the Fair they were kept in safe deposit boxes. In addition to the diamonds exhibited at the Fair, Diamond Corporation sent to the United States approximately 105,540 carats of rough uncut diamonds in June, 1940, in connection with the contemplated organization of a corporation in New York to do business in such diamonds in the United States. The corporation, however, was not organized because it was decided not to do business in the United States. With respect to these diamonds, totaling in all approximately 167,433 carats, approximately 137,831 carats were sent to Bermuda in 1941 and 1,761 carats to London in January, 1944. The balance, approximately 27,841 carats of boart, was sold to the Procurement Division of the United States Treasury Department at its request. No other diamonds of Diamond Corporation have been sent to or sold in the United States.

Diamond Trading

In 1940, at the request of the Procurement Division of the United States Treasury Department, Diamond Trading sent to the United States a sample parcel containing approximately 78,405 carats of industrial diamonds for inspection thereof by said Division. Representatives of the Treasury Department examined the sample and placed an order with Diamond Trading for certain amounts and qualities of such diamonds. As a result of that order of th. Treasury Department, Diamond Trading invoiced to the Treasury Department 46,550 carats of industrial diamonds and 600,000 carats of boart. After these diamonds and boart were received in this country they were compared with the sample package by Treasury representatives and accepted. The Treasury Department also purchased the sample package of diamonds. These purchases took place in 1941.

At the solicitation of representatives of the United States Government, Diamond Trading sold to Metals Reserve Company (a corporation created by the Reconstruction Finance Corporation and an agency of the United States Government) 4,500,000 carats of boart in September, 1942.

At the solicitation of representatives of the United States Government, Diamond Trading sold to U. S. Commercial Company (a corporation created by the Reconstruction Finance Corporation, and the functions of which have subsequently been transferred to the Office of Economic Warfare, and which was an agency of the United States Government) 10,000 carats of industrial diamonds in accordance with a contract dated January 27, 1944.

Pursuant to arrangements made in May, 1944, with Diamond Trading by the United States Embassy in London acting on behalf of the United States Government, it was agreed that 6,000 carats of industrial diamonds which were required for special purposes; namely, indentors and die stones, be sent to the United States to permit examination thereof by experts in this country to decide whether such stones were

suitable in size and quality for the special purposes in view. This was done and the selection made. The diamonds not required were returned to London in conformity with the arrangements.

All of the diamonds purchased from Diamond Trading were sent to the United States for inspection at the request of representatives of the United States Government.

Summary

The only diamonds of De Beers sold in the United States were its diamonds exhibited by it at the New York World's Fair and sold in 1941. The only diamonds sold by any of the other said defendants in the United States were sold to the Government of the United States or agencies thereof at the solicitation and request of said Government or its agencies.

L. D. SIMPSON

Sworn to before me this
23rd day of March, 1945.

WILLIAM J. BRENNAN
Notary Public.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff,* *against* DE BEERS CONSOLIDATED MINES, LTD., *et al.*, *Defendants.*	Civil No. 29-446

AFFIDAVIT OF WM. DWIGHT WHITNEY

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

WM. DWIGHT WHITNEY, being duly sworn, deposes and says:

1. I am a member of the law firm of Cravath, Swaine & Moore, 15 Broad Street, New York, N. Y., which has been retained to advise the defendants De Beers Consolidated Mines, Ltd. (hereinafter called De Beers), Diamond Corporation, Ltd. (hereinafter called Diamond Corporation), and Diamond Trading Company, Ltd. (hereinafter called Diamond Trading).

2. It has been impossible to obtain affidavits from any of said three defendants. I am informed and believe that they have no officers or agents within the United States. Since the institution of this suit we have frequently written and cabled to said defendants. We have received no letters in reply but have received cables which indicated that the shortest period within which a letter written by us and posted by air-mail was received was 28 days.

3. Nothing herein contained admits on behalf of any of said defendants, by silence or otherwise, any of the allega-

tions of the complaint which are expressed in terms of characterization or as conclusions of law, or any other allegation of the complaint. The statements herein contained are exclusively statements of fact, upon information and belief, relating to the particular subject-matter thereof, and not to be extended by implication, inference or construction to constitute an admission as to any other subject-matter.

4. The statement hereinafter made are based exclusively upon information received in cables from Sir Ernest Oppenheimer and De Beers in South Africa, and are believed to be true.

5. Neither N. W. Ayer & Son, Inc. (hereinafter called Ayer), New York Agency of Banque Diamantaire Anversoise S. A., Sidney H. Ball, nor Rogers, Mayer & Ball (upon each of whom service of the summons and complaint in the above-entitled suit has been made as an alleged agent of each of said three defendants) is an agent of any of said three defendants.

6. None of said three defendants has ever carried on business in the United States.

7. Lute J. Parkinson is not now employed by De Beers and never was an agent of De Beers.

8. De Beers has no representatives in the United States.

9. De Beers and its subsidiaries have not shut down all their mines. De Beers has not acquired pipe mines with the intent or for the purpose of closing them down so as to keep their production off the market. It has in fact acquired pipe mines, but with the intent and for the purpose of working them.

10. In South Africa the consent of the government is required before mining operations at any pipe mine may be

suspended, and such consent is given only when operation of the mine becomes unprofitable. The government may compel the owners to resume production when economic conditions so warrant.

11. As to production in recent years, the facts are that De Beers conducted mining operations until September 1940 when operations were suspended on account of the war and sections of the Company's property were taken over for war work. Operations were suspended during 1941 and 1942, but it was permitted to resume mining operations in 1943, surmounting considerable difficulties in so doing owing to shortage of workers, machinery and materials. Mining operations are still in progress.

12. De Beers is now working with Bultfontein and Dutoitspand mines, the Kleinzee deposit and Consolidated Diamonds, and despite its inability to procure machinery and transport vehicles, they are being worked to the fullest extent that present conditions will permit. The Premiere and New Jagersfontein mines have not been operating because their plants have been unavailable because of war conditions.

13. In South Africa the producers must sell in conformity with current legislation of the Union of South Africa which provides for sales through one channel, either through the Diamond Producers Association (a voluntary body) or through the Government Control Board. Quotes are governed by the capacity to produce and have nothing to do with the market's capacity to absorb or consume, on which quotas have no effect whatever. Demand governs supply, and quotas are merely for the purpose of a proportionate allocation of the demand amongst the various producers. The producers frequently produce considerably more than their quota which excess is stocked until the market can absorb such surplus, and incidentally such surprise also provides

additional industrial diamonds. Quotas in gem diamonds do not limit or restrict the production of industrial diamonds or boart.

14. Diamond Trading conducts "sights" in Kimberley, Cape of Good Hope, Union of South Africa, as well as in London. In normal times it conducts "sights" as frequently as once every two weeks. The intervals are determined by the time which it takes for diamonds purchased to be cut and polished before another purchase can be made. Due to war conditions and temporary lack of facilities and shortage of staff, "sights" are now temporarily held at irregular intervals.

15. At no time has the quantity of diamonds imported into the United States been limited or restricted. The producers reward Diamond Trading at a progressively higher rate as sales increase. The direct incentive is for Diamond Trading to sell the maximum amount.

16. There is no restrictive exclusion of, or selection among, customers. The only requirement as to customers is that they be of satisfactory integrity and probity and be of sufficient financial standing to enter into reasonable commitments, as none of said defendants carry on business as retailers. There is no fixed minimum of £20,000. Sales of £5,000 or £10,000 are frequently made.

17. The marketing of cumulative stocks even during the depression was not made in a manner calculated to maintain high prices. The facts were that diamonds were impossible of sale during the period 1930 to 1933, and in common with other commodities, diamond prices dropped severely.

18. None of said three defendants makes any attempt whatever to fix, stabilize or enhance the price at which diamonds are sold in the United States. Dealers and cutters in the United States are at liberty to sell their goods to the

best advantage and are not subject to any influence by any of said three defendants.

19. The quality of industrial diamonds has been maintained. The only modifications have been made at the request of the War Production Board and have resulted in improvement of quality. Since 1943 composition of industrial series have been telegraphed to the War Production Board before allocation of sales by that Board.

20. The prices of industrial diamonds have not been increased; in fact, pre-war prices have been maintained and in some instances—for example, crushing boart, for which there has been phenomenal demand—prices have been reduced from the pre-war level of 4 shillings per carat to 2 shillings, 6 pence. Material superior to crushing boart has been included in the crushing boart mixture to meet the demand in the United States. The price of mixed industrials smalls has been reduced from 7 shillings, 3 pence to 6 shillings, 9 pence. Numerous qualities which previously sold as gem diamonds have been degraded to the industrial category and have been priced at industrial prices, which has involved a considerable financial loss to the producers.

21. The requirements of all Allied powers have been met, in particular those of the United States, which have received priority. The requirements of consumers have been and are being met under the supervision and control of the War Production Board, and a reserve stock pile of 11 to 12 million carats has been established in Canada to which the United States Government has access along with other Allied powers. Furthermore, in 1942, the defendants were prepared to sell in London 8,350,000 carats of boart and 3,000,000 carats of better industrial diamonds to the War Production Board, but at the request of the British Government authorities and with the concurrence of the War Production Board the establishment of the Canadian reserve was substituted therefor and 11,500,000 carats were transferred to

the Western Hemisphere. These diamonds are available to the War Production Board as required. A copy of the agreement among the Governments of the United States, Canada and the United Kingdom of Great Britain and Northern Ireland, entered into March 26, 1943, is annexed hereto as Schedule A.

WM. DWIGHT WHITNEY

Sworn to before me this
24th day of March, 1945.

WILLIAM J. BRENNAN
Notary Public, Queens County
Queens Co. Clk's No. 3597, Reg. No. 368-B-6
Kings Co. Clk's No. 308, Reg. 487-B-6
N. Y. Co. Clk's No. 1242, Reg. No. 775-B-6
Commission Expires March 30, 1946

[NOTARIAL SEAL]

SCHEDULE A

The Government of the United States of America, the Government of Canada and the Government of the United Kingdom of Great Britain and Northern Ireland considering that it is desirable, as a precaution against the adverse fortunes of war, to create a reserve of industrial diamonds upon the North American Continent, for possible needs of the United Nations, have agreed as follows:—

ARTICLE 1.

Statement of Principle.

The contracting Governments intend that the normal consumption requirements of the various nations shall be met currently from mine production and from stocks in the United Kingdom and various producing countries, and that the reserve hereinafter provided for shall not be drawn upon except under the conditions stated in this agreement.

ARTICLE 2.

Size of Reserve

The reserve shall contain a minimum quantity of 11,500,000 carats of diamonds suitable for the uses specified in Appendix I and containing so far as possible the quantities in the various sizes specified under those uses.

ARTICLE 3.

Composition of Reserve.

The Government of the United Kingdom will take such steps as are practicable for the reserve to be established by the transfer to Canada of stocks of diamonds held by diamond producing companies and by the Diamond Corporation in the quantities and of the descriptions set forth in Appendix II. Appendix II also sets forth the quantities of dia-

monds of the various use classifications and sizes which it is estimated will be found in the total quantities to be transferred by each company.

ARTICLE 4.

Transfer of Reserve.

Transfer of the reserve shall begin as soon as possible after the date of signature of this agreement. The Government of the United Kingdom will use its best efforts to ensure transfer at a rate of 600,000 carats per week, but single shipments shall not exceed 300,000 carats each. The quantities so transferred shall be kept in safe keeping in such places in Canada as may be approved by the respective Governments. In the event that the Government of the United Kingdom desires to maintain a portion of the reserve in the United States, the Government of the United States will provide the necessary safe depositories.

ARTICLE 5.

Maintenance of Production and Supply.

The Government of the United Kingdom and the Government of the United States agree to take all practicable steps to maintain production at, or, if necessary, to increase it to levels adequate to provide both for the full current requirements of the United Nations, and for the maintenance of the present stocks in the United States and the United Nations reserve. The Government of the United States will use its best efforts to maintain an adequate supply of industrial diamonds to Canada to meet the current requirements of Canadian industries and to maintain existing stocks. Estimates of the current annual requirements of the United Nations made as of the 30th June, 1942, are set forth in Appendix III. It is understood, however, that such actual requirements may vary from these estimates from time to time.

ARTICLE 6.

Conditions of Withdrawal.

A. *Withdrawal by the United States.*

The Government of the United States shall be entitled to draw upon the reserve stock, in any classification when the United States Stock of that Classification falls to a quantity less than 90 per cent. of the normal stock as of the 30th June, 1942. The normal stocks as of the 30th June, 1942, are set forth by classifications in Appendix IV and are the stocks in private and Government hands in the United States including 4,505,000 carats of boart purchased but not delivered as of that date. Upon notice furnished to the Government of the United Kingdom by the Government of the United States that the stock of any classification has fallen below 90 per cent. of such normal stock, the Government of the United Kingdom undertakes to take all reasonable steps to make shipments to restore such stock to the figures set forth in Appendix IV for such classification within 60 days. If, at the end of such 60-day period, the shipments have not been made, the Government of the United States shall be entitled to draw upon the United Nations reserve in quantities sufficient to restore the stock of such classification to the figures set forth in Appendix IV for such classification. The Government of the United States may effect such withdrawals through the Metals Reserve Company or any other Government agency or department or through merchants or other private parties nominated by it.

B. *Withdrawal by the United Kingdom.*

The Government of the United Kingdom may draw upon the United Nations reserve when, in its opinion, it becomes impracticable to meet current requirements from stocks in the United Kingdom or from African stocks or production. The Government of the United Kingdom shall, under such circumstances, formally assure the Government of the United States of the reasons and need for such withdrawal.

C. *Withdrawal for Canadian Requirements.*

If the stocks in Canada of industrial diamonds of any of the descriptions mentioned in Appendix IV fall at any time below the quantity of that description consumed in Canada during the preceding six months the Government of Canada may notify the Government of the United Kingdom and the Government of the United States that a shortage of industrial diamonds of that description exists. If the shortage of that description is not met either by delivery from the United States or from the United Kingdom within 90 days of the date of notification then the Government of the United Kingdom shall withdraw from the reserve for requirements in Canada such quantities of diamonds as are required to remove the shortage.

D. *Withdrawals for other United Nations Requirements.*

Withdrawals for the requirements of other United Nations may be made after consultation between appropriate representatives of the Government of the United States and the Government of the United Kingdom.

E. *Combined Raw Materials Board.*

The provisions of this Article are subject to any action which may be required as the result of decisions by the Combined Raw Materials Board.

ARTICLE 7.

Prices of Material Withdrawn and Expenses of Transfer.

Industrial diamonds withdrawn from the United Nations reserve shall be withdrawn at United States dollar prices for comparable material (converted from Sterling at the official rate at the date of such withdrawal) ruling on the 30th June, 1942, to which prices may be added reasonable amounts to cover the proportion of the cost of the establishment, maintenance and liquidation of the United Nations reserve at

tributable to the diamonds withdrawn. Provided that if the ceiling prices of industrial diamonds in the United States are raised, the prices ruling on the 30th June, 1942 and chargeable hereunder may be raised by the same percentage as the percentage increase or increases in such ceiling prices. Since it is probable that the United Nations reserve will include certain quantities of cuttable material not normally employed for industrial purposes but suitable therefor, the Government of the United Kingdom will, in the event of an emergency requiring the use of such cuttable material, employ its best efforts to furnish this material to the United Nations at reasonable prices reflecting the utility of the material and its cost of production for industrial purposes and not its value as gem stones.

All expenses of the transfer of diamonds to North America for the United Nations reserve and of the maintenance, sorting and liquidation of the reserve including indemnity for any loss or damage to the diamonds shall be advanced in equal proportion by the Government of the United States and the Government of the United Kingdom subject to reimbursement from any sales from the reserve to the extent that the prices of sales from the reserve include, directly or indirectly, amounts which the Governments have advanced in respect of the establishment, maintenance and liquidation of the reserve. The Government of the United States undertakes to advance in the first instance any disbursements incurred in United States or Canadian dollars. On the liquidation of the reserve such part of the above-mentioned expenses as has not been reimbursed from sales from the reserve shall be shared equally by the two Governments. The Ministry of Supply of the United Kingdom will keep running accounts of advances and reimbursements.

ARTICLE 8.

Sorting Material.

The Government of the United Kingdom will make adequate arrangements with the producing companies and with

the Diamond Corporation to ensure that the United Nations reserve is sorted into the usual assortments of the Diamond Corporation upon its transfer to Canada and that such other necessary arrangements are made that withdrawals in accordance with the provisions of Article 6 can be made without any delay.

ARTICLE 9.

Agreement with Producers.

The Government of the United States and the Government of Canada take note of the draft agreement between the Minister of Supply of the United Kingdom and certain diamond producers, the Diamond Corporation, Ltd. and the Diamond Trading Company, Ltd., which is reproduced as Appendix V and will, so far as may be necessary, afford facilities for the performance of the terms of such an agreement.

ARTICLE 10.

Exchange of Information.

A. *Information furnished by the Government of the United States.*

The Government of the United States undertakes to furnish to the Government of the United Kingdom within 90 days after the end of each quarterly period commencing with that ending on the 31st December, 1942, a statement by classifications, of the stocks of industrial diamonds in the United States and of estimated purchases in South America until the end of 1946.

B. *Information furnished by the Government of the United Kingdom.*

The Government of the United Kingdom undertakes to furnish to the Government of the United States, within 90 days after the end of each quarterly period commencing with

that ending on the 31st December, 1942, a statement by classifications of the stocks of industrial diamonds included in the United Nations reserve. Such statements shall include a summary of the results and progress of sorting in Canada. The Government of the United Kingdom further agrees to furnish quarterly statements to the Government of the United States of stocks in the United Kingdom (separately for merchants, the Diamond Corporation and its affiliates, and producers) and, so far as possible, of stocks in the hands of producers in Africa.

Miscellaneous Provisions.

ARTICLE 11.

Nothing in this agreement shall be construed to prevent any of the United Nations from acquiring additional quantities of industrial diamonds through purchase for its national reserve if diamonds are available and can be supplied without interfering with supplies for normal consumption and for the implementing of this agreement.

ARTICLE 12.

The three contracting Governments agree to take such steps as are reasonable and practicable to ensure that all diamonds acquired by any person as industrial diamonds are sold by the most direct channels for use in industry and that they are not bought or sold speculatively or for hoarding.

ARTICLE 13.

The Government of the United States and the Government of the United Kingdom will each appoint a representative to meet and adjust any difficulties of interpretation of this agreement which may arise from time to time. In any question affecting Canadian interests the Government of Canada may appoint a representative to collaborate with the representatives of the other two Governments.

ARTICLE 14.

Duration of Agreement.

This agreement shall operate from the date of signature and, except by mutual consent, it shall terminate nine months after the cessation of hostilities. For the purpose of this clause the cessation of hostilities shall be the date on which there is a general suspension of hostilities between the United Kingdom and the United States (or the later of them to suspend hostilities) on the one hand and the last of the enemy Powers with whom they are now at war on the other hand.

Done in triplicate in London, the 26th day of March, 1943.

On behalf of the Government of the United States of America:

H. FREEMAN MATTHEWS.

On behalf of the Government of Canada:

VINCENT MASSEY.

On behalf of the Government of the United Kingdom of Great Britain and Northern Ireland:

ALEXANDER CADOGAN.

APPENDIX 1.

Quantities and Sizes of Industrial Diamonds for various uses which should, so far as possible, be contained in the United Nations' Reserve (Article 2).

	Carats.
I.—Drilling material—	
14 per carat and under	1,790,000
II.—Material for drilling and dressing grinding wheels—	
14 per carat to ⅓ carat	431,000
III.—Material for dressing grinding wheels—	
(a) ⅓ to 1 carat	255,000
(b) 1 to 2 carats	420,000
(c) 2 to 6 carats	227,000
(d) 6 carats and over	40,000
IV.—Material for shaped tools—	
(a) ⅓ to 1 carat	—
(b) 1 carat and over	20,000
V.—Material for wire drawing dies—	
(a) ⅛ to ⅓ carat	—
(b) ⅓ to 1 carat	—
(c) Over 1 carat	1,000
VI.—Carbons	—
VII.—Crushing boart	8,350,000
Total	11,534,000

APPENDIX II.

Quantities of Diamonds to be transferred to the United Nations Reserve by Producing Companies and the Diamond Corporation, together with an estimate of quantities of various sizes suitable for the undermentioned uses included therein (Article 3).

A.

Quantities to be transferred—

	Carats.	
1. Companhia de Diamantes de Angola	700,000	run of mine.
2. Consolidated African Selection Trust, Ltd.	82,000	serie goods.
	430,000	original boart.
	72,000	sand.
	150,000	run of mine (less dust).
	66,000	Ball-Mill product.
	800,000	carats.
3. Sierra Leone Selection Trust, Ltd.	105,000	serie goods.
	1,025,000	original boart.
	358,000	run of mine.
	12,000	sand.
	1,500,000	carats.
4. Société Internationale Forestière et Minière du Congo...	2,000,000	pre-classe.
	5,000,000	original crushing boart.
	7,000,000	carats.
	184,378	United Kingdom reserve.

5. Diamond Corporation, Ltd. (Incorporated in the Union of South Africa)	3,000,000 35,000	boart. selected stones.
	3,219,378	carats.

B.

Estimated Composition of Material to be transferred.

	Carats.
I.—Drilling material 14 per carat and under..	495,500
II.—Material for drilling and for dressing grinding wheels 14 per carat to ⅓ carat (including material for wire drawing ⅛ to ⅓ carat)	618,000
III.—Material for dressing grinding wheels, for shaped tools and for wire drawing dies—	
⅓ to 1 carat.....	588,500
1 to 2 carats.....	564,378
2 to 6 carats.....	191,000
6 carats and over.....	37,000
IV.—Crushing and better boart.....	10,179,500
V.—Cuttable—not useful industrially.....	545,500
Total	13,219,378

APPENDIX III.

Estimate made at 30th June, 1942, of the Supplies of Industrial Diamonds required annually to meet the current needs of the United Nations (Article 5).

	United States and Canada. Carats.	United Kingdom, U.S.S.R. and other countries. Carats.	Total Carats.
I.—Drilling material—			
14 per carat and under	600,000	125,000	725,000
II.—Material for drilling and dressing grinding wheels—			
14 per carat to ⅓ carat	250,000	150,000	400,000
III.—Material for dressing grinding wheels—			
(a) ⅓ to 1 carat	150,000	70,000	220,000
(b) 1 to 2 carats	150,000	80,000	230,000
(c) 2 to 6 carats	80,000	60,000	140,000
(d) 6 carats and over	20,000	—	20,000
IV.—Material for shaped tools—			
(a) ⅓ to 1 carat	20,000	35,000.	55,000
(b) 1 carat and over	8,000	17,000	25,000
V.—Material for wire drawing dies—			
(a) ⅛ to ⅓ carat) (b) ⅓ to 1 carat)	35,000	16,000	51,000
(c) Over 1 carat	8,000	7,500	15,500
VI.—Carbons	—	—	—
VII.—Crushing boart	4,300,000	1,000,000	5,300,000
Total	5,621,000	1,560,500	7,181,500

APPENDIX IV.

United States' normal stock of Industrial Diamonds as at 30th June 1942 (Article 61).

	Carats
I.—Drilling material —	
14 per carat and under	1,185,000
II.—Material for drilling and dressing grinding wheels—	
14 per carat to ⅓ carat	663,000
III.—Material for dressing grinding wheels—	
(a) ⅓ to 1 carat	406,000
(b) 1 to 2 carats	307,000
(c) 2 to 6 carats	150,000
(d) 6 carats and over	55,000
IV.—Material for shaped tools—	
(a) ⅓ to 1 carat	79,000
(b) 1 carat and over	20,000
V.—Material for wire drawing dies—	
(a) ⅛ to ⅓ carat	76,000
(b) ⅓ to 1 carat	65,000
(c) Over 1 carat	19,000
VI.—Carbons	59,000
VII.—Crushing boart and powder	13,116,000
Total	16,200,000

APPENDIX V.

Draft Agreement between the Minister of Supply and Diamond Producing Companies, the Diamond Corporation and the Diamond Trading Company, Limited, regarding a United Nations Reserve of Industrial Diamonds.

This Agreement is made the day of , 1943, between Companhia de Diamontes de Angola, a company incorporated in whose principal office is situate at Consolidated African Selection Trust, Limited, whose registered office is situate at Sierra Leone Selection Trust, Limited, whose registered office is situate at and Société Internationale Forestière et Minière du Congo, a company incorporated in , whose principal office is situate at (hereinafter together called "the Companies") of the first part, the Diamond Corporation, Limited, a company incorporated in the Union of South Africa, whose principal office is situate at (hereinafter called "the Corporation") of the second part, the Diamond Trading Company, Limited, a company incorporated in the Union of South Africa, whose principal office is situate at (hereinafter called "the Trading Company") of the third part, and the Minister of Supply (hereinafter called "the Minister") of the fourth part.

Whereas it has been agreed between the Government of the United Kingdom of Great Britain and Northern Ireland, the Government of Canada, and the Government of the United States of America that it is desirable as a precaution against the adverse fortunes of war to create a reserve of industrial diamonds (hereinafter referred to as "the Reserve") in Canada for possible needs of the nations now associated with them in war

And whereas the Companies, the Corporation and the Trading Company have agreed to collaborate with the Minister in the establishment of the Reserve in manner hereinafter appearing

Now it is hereby agreed as follows:—

ARTICLE I.

Each of the Companies and the Corporation will transfer to addresses in Canada approved by the Minister the quantities and descriptions of diamonds stated against its name in Schedule I of this Agreement. The aggregate of such diamonds when so transferred shal constitute the Reserve.

ARTICLE 2.

The diamonds in the Reserve will remain the property of one of the Companies or the Corporation or the Trading Company as the case may be and shall be sold to any person who is not a party to this Agreement only at the request of the Minister and by or through the Trading Company and in according with any contracts between the Companies and any of them and the Corporation which may for the time being be operative.

ARTICLE 3.

No part of the Reserve shall be removed from the approved addresses in Canada except with the consent of the Minister or except at the request of the Minister to meet an emergency requirement for industrial diamonds notified to the Corporation by the Minister. On receipt of such notification, the Corporation will arrange for the sale from the Reserve of such classes and quantities of diamonds to the Government of or merchants in the country where the emergency requirement has arisen as may be specified in the notification. The notification will specify the quantities of diamonds to be sold in the normal selling classifications of the Trading Company and each of the Companies will sell to the Corporation, according to the normal contracts existing between it and the Corporation, such quantities and classes of diamonds as the Corporation may call upon it to provide as being necessary to meet the emergency requirement.

ARTICLE 4.

(1) It is the intention of the parties hereto that the Companies, the Corporation and the Trading Company shall be relieved of all payments in connexion with the diamonds provided for the Reserve other than payments which the Companies, the Corporation or the Trading Company would have made if the diamonds had not been provided for the Reserve and with a view thereto the following provisions shall apply:—

(2) The Minister shall—

(a) discharge all expenses of the transfer of diamonds to North America for the Reserves and of the maintenance, sorting and liquidation of the Reserve;

(b) discharge all other proper payments, including all (if any) taxes, duties, assessments or charges, whether on export, sales, income or otherwise, which would not have been incurred or levied if the diamonds had not been removed to North America for the purposes of the Reserve.

(3) Each of the Companies shall refund to the Minister from the proceeds of the sale by it of any diamonds comprised in the Reserve such expenses or payments discharged by the Minister in respect of those diamonds as the Company would have discharged if those diamonds had been sold in London to the Diamond Corporation on the 30th June, 1942.

(4) The Diamond Corporation shall refund to the Minister from the proceeds of the sale by it of any diamonds comprised in the Reserve such expenses or payments discharged by the Minister in respect of those diamonds as the Corporation would have discharged if those diamonds had been sold by it on the 30th June, 1942.

(5) The Trading Company shall refund to the Minister from the proceeds of the sale by it of any diamonds comprised in the Reserve such expenses or payments discharged by the Minister in respect of those diamonds as the Trading Company would have discharged if those diamonds had been sold by it in London on the 30th June, 1942. In addition, the Trading Company shall refund to the Minister from the sales of diamonds comprised in the Reserve the proceeds of such additions (if any) to the selling prices of the 30th June, 1942, as are made to the selling prices of those diamonds under Article 7 of this Agreement to meet the additional costs of the Minister.

(6) If on the termination of this Agreement there remain unsold any diamonds which were included in the Reserve the Minister will be entitled to the refund out of the proceeds of the sale of those diamonds by the Company owning them, the Corporation and the Trading Company of only such expenses or payments discharged by him in respect of those diamonds as the Company, the Corporation and the Trading Company respectively would have discharged if the diamonds had not formed part of the Reserve. The Minister will, however, be prepared to consider with the other parties hereto when the time arises whether this obligation should be discharged by part payment of the estimated amount due from those other parties or otherwise.

ARTICLE 5.

The transfer of diamonds to Canada under this Agreement shall begin as soon as possible after the date of signature of this Agreement and the Companies and the Corporation severally undertake to use their best efforts to transfer the diamonds mentioned in Schdule I opposite their respective names at a rate not less than the rate set forth and from the date set forth in Schedule II for each Company. Single shipments shall not exceed 300,000 carats each.

ARTICLE 6.

The Companies and the Corporation will arrange for the sorting of the diamonds in the Reserve in such manner as will enable the quantities of industrial diamonds suitable for the various industrial uses to which they are put to be estimated readily and in such manner as they will be readily available for sale in the usual selling classifications of the Trading Company. A report on the quantities of diamonds of various classes in the Reserve and of the progress of the sorting will be furnished to the Minister by each of the Companies, the Corporation and the Trading Company or by the Corporation on their behalf for each quarter commencing with that ending on the 31st March, 1943, and at the end of each three months thereafter.

ARTICLE 7.

The prices at which the diamonds will be sold from the Reserve will be the Trading Company's selling prices in operation on the 30th June, 1942, with the addition of such amounts as are estimated by the Minister to be reasonable to cover the additional costs of the Minister, the Companies, the Corporation and the Trading Company for the establishment, maintenance and liquidation of the Reserve (including the costs of returning diamonds to the United Kingdom and insurance mentioned in Articles 9 and 10), provided that if the ceiling prices of industrial diamonds in the United States are raised the Trading Company's selling prices for diamonds in the Reserve may be increased correspondingly with the consent of the Minister. If rough diamonds of cuttable quality not normally sold as industrial diamonds are sold out of the Reserve as industrial diamonds, the prices to be charged by the Trading Company will be such reasonable prices as reflect the utility of the material and its cost of production for industrial purposes and not its value as gem stones. Such diamonds shall be sold at those prices subject

to an undertaking that they will be re-sold only for use in industry and notification of such sales will be made to the Minister.

ARTICLE 8.

The Companies, the Corporation and the Trading Company severally agree to furnish to the Minister within 30 days after the end of each quarterly period commencing with that ending on the 31st March, 1943, a statement of the stocks of industrial diamonds which they hold, with such information as to the quantities of the various classes mentioned in Schedule I contained in the stocks as will enable an estimate to be made of the quantities which are suitable for various industrial uses.

ARTICLE 9.

The Minister will make provision at his own expense for the return to the United Kingdom of the diamonds remaining in the Reserve at the termination of this Agreement.

ARTICLE 10.

The Minister will pay the costs of insuring at the current selling prices of the owners the diamonds provided for the Reserve against all insurable risks of damage or loss from the date when the diamonds are despatched from storage *en route* to Canada until they are sold or returned to the United Kingdom in accordance with the provisions of Article 9 or otherwise cease to be covered by this Agreement, whichever first happens. These costs shall be regarded as expenses for the purpose of refunds to the Minister under Article 4 of this Agreement.

ARTICLE 11.

This Agreement shall operate from the date of signature and, unless in view of the passing of the emergency it is terminated earlier by mutual consent, shall terminate nine months after the cessation of hostilities, except as regards the reimbursement of expenses referred to in Article 4 hereof. For the purpose of this clause the cessation of hostilities shall be the date on which there is a general suspension of hostilities between the United Kingdom and the United States of America (or the later of them to suspend hostilities) on the one hand and the last of the enemy Powers with whom they are now at war on the other hand.

ARTICLE 12.

This Agreement shall be construed according to the law of England.

SCHEDULE I.

Quantities of Diamonds to be transferred to the United Nations Reserve by Producing Companies and the Diamond Corporation.

1. Companhia de Diamantes de Angola	700,000 carats run of mine.
2. Consolidated African Selection Trust, Ltd.	82,000 carats serie goods. 430,000 carats original boart. 72,000 carats sand. 150,000 carats run of mine (less dust). 66,000 carats Ball-Mill product. 800,000 carats.
3. Sierra Leone Selection Trust, Ltd.	105,000 carats serie goods. 1,025,000 carats original boart. 358,000 carats run of mine. 12,000 carats sand. 1,500,000 carats.
4. Société Internationale Forestière et Minière du Congo	2,000,000 carats pre classe. 5,000,000 carats original crushing boart. 7,000,000 carats.
5. Diamond Corporation, Ltd. (Incorporated in the Union of South Africa)	184,378 carats United Kingdom reserve. 3,000,000 carats boart. 35,000 carats selected stones. 3,219,378 carats.

SCHEDULE II.

Rate of Transfer of Diamonds to Canada for the United Nations Reserve.

Companhia de Diamantes de Angola	35,000 carats run of mine goods each week from the week commencing , 1943.
Consolidated African Selection Trust, Ltd.	40,000 carats each week from the week commencing , 1943, spread as most convenient over the various classes of goods to be transfered.
Sierra Leone Selection Trust, Ltd.	70,000 carats each week from the week commencing , 1943, spread as most convenient over the various classes of goods to be transfered.
Société Internationale Forestière et Minière du Congo	320,000 carats each week from as soon after the , 1943, as is possible; preference being given to the shipment of pre classe goods.
Diamond Corporation, Ltd.	184,378 carats United Kingdom reserve during the two weeks commencing , 1943; and 145,000 carats of boart each week from the week commencing , 1943, 35,000 carats selected stones as early as possible.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM,
Defendants.

Civil No. 20-446

NOTICE OF MOTION FOR LEAVE TO TAKE DEPOSITIONS

To CRAVATH, SWAINE and MOORE attorneys for
De Beers Consolidated Mines, Ltd.
Diamond Corporation, Ltd.
Diamond Trading Company

HOOKER, ALLEN and DUNCAN attorneys for
Societe Generale de Belgique

ROOT, CLARK, BUCKNER and BALLENTINE attorneys for
Societe Miniere du Beceka
Societe Internationale Forestiere et Miniere du Congo
Companhia de Diamantes de Angola
George K. Sturm

DAVIS, POLK, WARDWELL, SUNDERLAND and KIENDL
attorneys for
Consolidated African Selection Trust, Ltd.
Sierre Leone Selection Trust, Ltd.

CHADBOURNE, WALLACE, PARK and WHITESIDE attorneys for
Russell Johnson Parker

Please take notice that the undersigned will bring the within motion on for hearing before this Court at Room 506, United States Court House, Foley Square, New York, N. Y., on the 30th day of March, 1945 at 10:30 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard.

s/ EDWARD S. STIMSON
EDWARD S. STIMSON
Special Assistant to the Attorney General
Counsel for the Plaintiff

Room 2303—United States Court House
Foley Square, New York 7, N. Y.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM,
Defendants.

Civil No. 29-446

MOTION FOR LEAVE TO TAKE DEPOSITIONS BEFORE ANSWER

The United States of America moves the court for an order granting it leave to take the depositions of the officers and employees of the corporations having knowledge of the facts desired as set out below and of individuals, both as listed below, for the purpose of discovery or for use as evidence in this action or for both purposes on the ground that their testimony is desired for use on the motion of De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd. and Diamond Trading Company to dismiss the action for want of jurisdiction over their persons and to quash the service of summons, for use on the same issues which the other foreign corporate defendants intend to raise, all as set forth in the

supporting Affidavit of Edward S. Stimson attached hereto and filed herewith.

The United States of America moves the court that the order granting leave to take these depositions authorize it to issue subpoenas requiring the production of documentary evidence as follows: all correspondence and contracts with any of the defendants and all printed material, advertisements, inter-office memoranda, memoranda and notations bearing upon or tending to show the doing of business or any activity by the foreign corporate defendants in the United States. The individuals whom and the corporations the personnel of which the Government desires to take depositions are as follows:

Russell Johnson Parker
120 Broadway
New York, N. Y.

Albert E. Thiele
120 Broadway
New York, N. Y.

George K. Sturm
26 Beaver Street
New York, N. Y.

Sydney H. Ball
26 Beaver Street
New York, N. Y.

Rogers, Mayer & Ball
26 Beaver Street
New York, N. Y.

Newmont Mining Company
14 Wall Street
New York, N. Y.

American Metals Co., Ltd.
61 Broadway
New York, N. Y.

N. W. Ayer & Son, Inc.
30 Rockefeller Plaza
New York, N. Y.

Medley G. B. Whelpley
120 Broadway
New York, N. Y.

Banque Diamantaire Anversoise, S.A.
630 Fifth Avenue
New York, N. Y.

Chase National Bank
18 Pine Street
New York, N. Y.

Chase National Bank
11 Broad Street
New York, N. Y.

Guaranty Trust Company, of New York
140 Broadway
New York, N. Y.

Standard Bank of South Africa, Ltd.
67 Wall Street
New York, N. Y.

Pierre Cattier
10 Pearl Street
New York, N. Y.

Gilbert Perrier
10 Pearl Street
New York, N. Y.

Emile Heyrman
10 Pearl Street
New York, N. Y.

Atlantic Overseas Corporation
10 Pearl Street
New York, N. Y.

International Sales Corporation
500 Fifth Avenue
New York, N. Y.

s/ EDWARD S. STIMSON
EDWARD S. STIMSON
Special Assistant to the Attorney General
Attorney for the Plaintiff.

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM,
Defendants.

Civil No. 29-446

AFFIDAVIT IN SUPPORT OF MOTION FOR LEAVE LEAVE TO TAKE DEPOSITIONS

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

EDWARD S. STIMSON, being first duly sworn, deposes and says that he is a Special Assistant to the Attorney General with headquarters in Washington, D. C.; that he is one of counsel for the United States of America in the above entitled cause; that the complaint in the above entitled cause was filed on January 29, 1945; that a copy of the summons and complaint in this action was personally served on the individual defendants in the Southern District of New York as follows: Russell Johnson Parker, 31st day of January 1945, Albert E. Thiele, 31st day of January 1945; and George K. Sturm, 30th day of January 1945; that a copy of the summons and complaint was served on Solomon R. Guggenheim on the 17th day of February 1945, by delivering copies of the same to a responsible person at his residence, Trillora Court, Port Washington, New York; that a copy of the summons and complaint in this action was served on each of the for-

eign corporate defendants in the Southern District of New York between January 30 and February 1, 1945 inclusive; that none of the defendants have filed an answer and that the only pleading filed by any of the defendants is a motion to dismiss for lack of jurisdiction over the person of defendant and to quash the service of summons filed by De Beers Consolidated Mines, Ltd., Diamond Corporation Ltd., and Diamond Trading Company on the 23rd day of February 1945; that counsel for Societe Generale de Belgique has objected to government counsel interviewing persons connected with corporations and individuals served with process as agents of Societe Generale de Belgique and that Government counsel has not felt free to interview any of the persons or corporations by their officers and employees who were served with process as agents, cashiers or directors of the foreign corporate defendants; that meanwhile counsel for the defendant foreign corporations are busily engaged in interviewing these persons connected with corporations and individuals served as agents, cashiers and directors; that although an extension of one month to move, plead or answer was consented to by counsel for the Government, counsel for the foreign corporate defendants in a conference before Judge Samuel Mandelbaum on the 13th day of March 1945, urged that they needed additional time to secure affidavits on the question of doing business in the United States from abroad thus clearly indicating that all of the foreign corporate defendants intend to raise the issue of jurisdiction over their persons.

s/ EDWARD S. STIMSON
EDWARD S. STIMSON

Sworn to and subscribed before me this 21 day of March, 1945.

s/ MARY C. SEPE
Notary Public Queens Co. No. 3630
Reg. No. 477-S-5
N. Y. Co. Clk's No. 1803—Kings Co. Clk's No. 180
Commission Expires March 30, 1945

(SEAL) Notary Public

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM,
Defendants.

Civil No. 29-446

Appearances:

WENDELL BERGE, Esq.,
Assistant Attorney General;

HERBERT A. BERMAN, PATRICK A. GIBSON AND EDWARD S. STIMSON, Esqs.,
Special Assistants to the Attorney General, Attorney for plaintiff.

CRAVATH, SWAINE & MOORE, Esqs.,
Attorneys for De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd., Diamond Trading Company, Ltd.,

ROBERT T. SWAINE, BRUCE BROMLEY, WM. DWIGHT WHITNEY, JACK W. ROBBINS, Esqs., of Counsel.

ROOT, CLARK, BUCKNER & BALLANTINE, Esqs.,
Attorneys for defendants Societe Internationale Forestiere et Miniere du Congo and Companhia de Diamantes de Angola,
JOHN E. F. WOOD, Esq., of Counsel.

HOOKER, ALLEY & DUNCAN, Esqs.,
Attorneys for defendant Societe Generale de Relgique, appearing specially,
JAMES B. ALLEY, Esq., of Counsel.

OPINION

MANDELBAUM, *D. J.*:

The complaint in this action brought by the government charges the corporate defendants and certain individuals with engaging in an unlawful combination and conspiracy restraining foreign commerce in this country in industrial and gem diamonds, in violation of the Sherman Anti-Trust and the Wilson Tariff Acts. The complaint seeks injunctive relief to prevent the continuation of the illegal practices charged. It is alleged that as one of the results of the conspiracy, the United States Government has been prevented from accumulating a stockpile of industrial diamonds in this country for military purposes.

At the time of the filing of the complaint, the court signed a restraining order temporarily enjoining the corporate defendants from withdrawing their assets in banks and from otherwise disposing of property belonging to the corporate defendants in the United States.

The government is now moving for a temporary injunction to replace the restraining order pending the determination of the issues in this case.

The main question before this court is whether or not the court has the power to issue the injunction prayed for. In my opinion, this court clearly has the power to issue the injunction both under the Judicial Code and under Sec. 4 of the Sherman Act. The Judicial Code (28 U. S. C. A., Sec. 377) authorizes the United States Courts "to issue all writs not specifically provided for by statute which may be necessary for the exercise of their respective jurisdictions and agreeable to the usages and principles of law". Sec. 4 of the Sherman Act (15 U. S. C. A. 4) expressly provides that "before final decree, the court may, at any time make temporary restraining order or prohibition as shall be deemed just in the premises." So much for the power of the court to issue the injunction.

Having come to the conclusion that this court has the power, the next problem which presents itself is whether or not this court in the exercise of its discretion should issue the preliminary injunction on the facts before it on this motion.

The defendants are all foreign corporations. None of the defendants have filed answers to the complaint. I am convinced from the facts appearing in the verified complaint and the affidavits in support of and in opposition to this motion that if the injunction does not issue, the assets of the corporate defendants will in all probability be withdrawn from this country. In that event, if the government should succeed in establishing its cause, there would be no way to enforce the decree of the court.

The resulting damage to the government, if I were to deny this motion, is incomparably greater than any damage to the corporate defendants if I were to grant the motion.

Equity will take necessary steps to protect its jurisdiction where, as here, there is a great probability that the enforcement of its decrees will otherwise be frustrated.

During the course of argument, the question was raised by counsel of whether the court should deal with the problem of the defendants' doing business here, as ancillary to the question of the preliminary injunction. I am not passing upon the defendants' doing business, because in my opinion, that question is not before the court on the instant motion.

The motion is granted. Settle order on notice.

Findings of Fact

1. The facts alleged in the verified complaint are adopted by the court and incorporated herein as findings of fact for the purposes of this motion only.

Conclusions of Law

1. This court has the power to grant the preliminary injunction prayed for under Sec. 4 of the Sherman Act and Sec. 377 of Title 28 U. S. C. A.

2. This court in the exercise of its discretion grants the motion for a preliminary injunction.

Dated March 28th, 1945

SAMUEL MANDELBAUM
U. S. D. J.

U. S. District Court
Filed
March 28, 1945
S. D. of N. Y.

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff*, v. DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM, *Defendants*.	Civil No. 29-446

PRELIMINARY INJUNCTION

On the 2nd day of March 1945, there came on for hearing the motion of plaintiff, United States of America, for a preliminary injunction restraining the foreign corporate defendants and after reading the verified complaint and the affidavits submitted by plaintiff and defendants and hearing argument and duly considering the same (but without considering the question whether the foreign corporate defendants are doing business in the United States, which question is not before the Court on this motion, and without prejudice to the rights of the foreign corporate defendants to have such question and the question of the sufficiency of service of process determined later), this Court, for the purposes of this motion only, adopts and incorporates herein as findings

of fact the facts alleged in said complaint and upon said complaint and said affidavit finds as facts: that defendants are foreign corporations and they could quickly withdraw their assets from the United States before the entry of a final decree in this cause; that if the preliminary injunction were denied, they would in all probability do so, in which event, if the Government should succeed in establishing its cause, there would be no way to enforce the decree of the court; and that the resulting damage to the Government would be incomparably greater than any damage to the corporate defendants if the preliminary injunction were granted; and this Court concludes as a matter of law that under Section 4 of the Sherman Act and Section 377 of Title 28 USCA the Court has power to issue a preliminary injunction in the terms of the order which follows and that the court should and does hereby exercise its discretion so to do and it is therefore, on motion of the plaintiff,

ORDERED that the foreign corporate defendants, namely, Societe Internationale Forestiere et Miniere du Congo, Companhia de Diamantes de Angola, Societe Miniere du Beceka, Societe Generale de Belgique, De Beers Consolidated Mines, Ltd., Diamond Trading Company, Ltd., Diamond Corporation, Ltd., Consolidated African Selection Trust, Ltd., and Sierra Leone Selection Trust Ltd., each and all of them, their officers, agents, servants, employees and attorneys and all persons having notice of this order be enjoined from withdrawing money belonging to the corporate defendants from banks in the United States and from withdrawing diamonds or other property belonging to the corporate defendants from safe deposit boxes in the United States and from withdrawing from the United States or selling, transferring or otherwise disposing of property belonging to the corporate defendants in the United States until this case has been finally determined and said foreign corporate defendants have complied with all orders and decrees which may be or have been rendered against them in this cause and that all persons

having notice of this order be enjoined from assisting said corporate defendants, their officers, agents, servants, employees and attorneys to violate this order; and it is further

ORDERED that this preliminary injunction shall not apply to monies or funds which, after January 29, 1945, are paid or transmitted abroad through banks in the United States for account of or credit to any of the corporate defendants by or on behalf of persons other than the corporate defendants, where such payments or transfers are made for diamonds to be delivered from outside the United States to or for the account of such persons; nor shall this order apply to diamonds so purchased after January 29, 1945; and this preliminary injunction shall not apply to funds sent by the foreign corporate defendants from outside of the United States after January 29, 1945 nor to mining machinery equipment and supplies purchased for shipment abroad, or expenses incident thereto, paid for out of any of said funds sent from outside the United States after January 29, 1945. Any bank through which any payment or transfer is made after January 29, 1945 for credit to or account of any of the corporate defendants by or on behalf of persons other than the corporate defendants and any bank which receives any payment or transfer of funds made on behalf of the corporate defendants from outside the United States after January 29, 1945 may assume, in the absence of knowledge to the contrary, that this order does not apply to such payment or transfer or any further payment or transfer of such funds; and it is further

ORDERED that this preliminary injunction shall be and remain subject to the provisions of the two orders signed and and filed on January 31, 1945, modifying the temporary restraining order signed and filed on January 29, 1945 and the order of March 16, 1945 exempting certain property from the temporary restraining order; and it is further

ORDERED that this order be filed forthwith in the office of the Clerk of this Court and entered on record.

Issued at New York, New York, on this 3rd day of April, 1945 at 1:30 o'clock P. M.

SAMUEL MANDELBAUM
United States District Judge

U. S. District Court
Filed
April 3, 1945—2:10 P. M.
S. D. of N. Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, *Plaintiff*. v. DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM, *Defendants*.	Civil No. 29-446

ORDER DENYING STAY OF PRELIMINARY INJUNCTION

Defendants, De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd. and Diamond Trading Company, Ltd., reserving their objection to the jurisdiction of the Court over their persons, through their attorneys, having applied to the undersigned in Chambers for a stay of the provisions of the first "ORDERED" paragraph of the preliminary injunction issued herein on the 3rd day of April, 1945, pending the application by said defendants to the Supreme Court of the United States for a writ of certiorari to review said preliminary injunction and until the determination by the Supreme Court of said application, and in the event that the petition for the writ of certiorari is granted, until final decision of

the case by said Supreme Court, and for a like stay pending appeal by said defendants from said preliminary injunction to the United States Circuit Court of Appeals for the Second Circuit, and until the hearing and determination of said appeal by said Circuit Court of Appeals, and after hearing counsel for the said defendants in support of said application and counsel for the Government in opposition thereto, it is

ORDERED that said application for a stay as aforesaid be, and hereby is, in all respects denied.

April 3, 1945.

SAMUEL MANDELBAUM
United States District Judge

U. S. District Court
Filed
April 4, 1945
S. D. of N. Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., SOCIETE GENERALE DE BELGIQUE, SOCIETE MINIERE DU BECEKA, SOCIETE INTERNATIONALE FORESTIERE ET MINIERE DU CONGO, COMPANHIA DE DIAMANTES DE ANGOLA, CONSOLIDATED AFRICAN SELECTION TRUST, LTD., SIERRA LEONE SELECTION TRUST, LTD., RUSSELL JOHNSON PARKER, LUTE J. PARKINSON, HERBERT H. VREELAND, ALBERT E. THIELE, SOLOMON R. GUGGENHEIM, CLENDENIN J. RYAN, AND GEORGE K. STURM,
Defendants.

IT IS HEREBY STIPULATED AND AGREED that Exhibits A-1 and A-2 (consisting of two bound books of advertising matter) to the affidavit of Warner S. Shelly, sworn to March 23, 1945, and filed herein on behalf of defendants, De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd. and Diamond Trading Company, Ltd., be transmitted as original exhibits and shall constitute part of the transcript of record certified by the above Court to the Supreme Court of the United States in connection with the petition of said defendants to said Supreme Court of the United States for a writ of certiorari to review the decision and order of this Court granting a preliminary injunction in said action, and counsel for said defendants and for the Government may refer to said exhibits in their briefs and oral argument in said Supreme Court with the same force and effect as if said exhibits were formally included in the printed transcript of record, and it is further

STIPULATED that said exhibits shall be returned to the office of the clerk of the United States District Court for the Southern District of New York promptly after they shall have served their purpose in the Supreme Court of the United States.

Dated: April 4, 1945.

EDWARD S. STIMSON
Special Assistant to the Attorney General of the United States, attorney for Plaintiff.

CRAVATH, SWAINE & MOORE
Attorneys for Defendants, De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd. and Diamond Trading Company, Ltd.

SO ORDERED:

April 4th, 1945.

HENRY W. GODDARD,
United States District Judge

U. S. District Court
Filed
April 4, 1945
S. D. of N. Y.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,
Plaintiff,

against

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., *et al.*,
Defendants.

STIPULATION AS TO RECORD

IT IS HEREBY STIPULATED AND AGREED that the foregoing is a true transcript of the record of the United States District Court for the Southern District of New York in the above-entitled matter, as agreed upon by the parties.

Dated, New York, April , 1945.

Attorneys for Defendants, De Beers Consolidated Mines, Ltd., Diamond Corporation, Ltd. and Diamond Trading Company, Ltd.

Special Assistant to the Attorney General of the United States, Attorney for Plaintiff.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA,
Plaintiff,

against

DE BEERS CONSOLIDATED MINES, LTD., DIAMOND CORPORATION, LTD., DIAMOND TRADING COMPANY, LTD., *et al.*,
Defendants.

CLERK'S CERTIFICATE

I, GEORGE J. H. FOLLMER, Clerk of the District Court of the United States of America for the Southern District of New York, DO HEREBY CERTIFY that the foregoing is a correct transcript of the record of said District Court in the above-entitled matter, as agreed upon by the parties.

IN TESTIMONY WHEREOF I have caused the seal of said Court to be hereunto affixed, in the City of New York, in the Southern District of New York, this day of April, in the year of our Lord One thousand nine hundred and forty-five and of the independence of the said United States the One hundred and sixty-ninth.

GEORGE J. H. FOLLMER,
Clerk.

[SEAL]

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 23, 1945.

The petition herein for a writ of certiorari to the District Court of the United States for the Southern District of New York is granted. The case is transferred to the summary docket and assigned for argument immediately following Nos. 1016 and 1017. Counsel are requested to discuss in their briefs and upon oral argument the question whether the order of the District Court may appropriately be reviewed at the present stage of the proceedings by a writ of certiorari under section 262 of the Judicial Code.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.